No. 80-2078

JUN 19

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

DAMES & MOORE, a partnership,

Petitioner,

vs.

DONALD T. REGAN, the Secretary of the Treasury of the United States of America, and THE UNITED STATES OF AMERICA,

Respondents,

and

BANK MARKAZI IRAN, THE ISLAMIC REPUBLIC OF IRAN and THE ATOMIC ENERGY ORGANIZATION OF IRAN,

Intervenors.

BRIEF OF INTERVENOR BANK MARKAZI IRAN

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June 19, 1981

Questions Presented for Review

1. Whether the President of the United States had the constitutional and statutory authority in an undisputed national emergency to order the transfer of blocked Iranian assets in accordance with the terms of an international agreement settling disputes between Iran and the United States, notwithstanding attachments against such assets which had been obtained subsequent to the blocking order pursuant to a revocable license issued by the Secretary of Treasury?

2. Whether the President had the constitutional and statutory authority to submit the claims of United States nationals against a foreign state and its agencies and instrumentalities to binding international arbitration, in furtherance of the compelling foreign policy and security interests of the United States?

3. Whether petitioner presently, if ever, is entitled to compensation for Executive actions rescinding its revocable license to attach previously blocked Iranian assets, and submitting its underlying claim against Iranian sovereign entities to binding international arbitration?

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28 U.S.C. § 1332(a)(2) (1976) 30

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55 Stat. 838 (1941), War Powers Act of 1941 11

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Agreement Between the United States and Peoples Republic of Bulgaria, 14 U.S.T. 969, T.I.A.S. No. 5387 (1963) 21

Agreement Between the United States and the Polish Peoples Republic, 11 U.S.T. 1952, T.I.A.S. No. 4545 (1960) 21

Agreement Between the United States and the Romanian Peoples Republic; 11 U.S.T. 317, T.I.A.S. No. 4451 (1960) 21

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Other Authorities:

5 Hackworth, Digest of International Law (1943) .....

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Hearings Before the Senate Committee on Banking, Housing and Urban Affairs: Iranian Assets Settlement, 97th Cong., 1st Sess. (February 19, 1981) 34

Hearings on the Algerian Declarations Before the Senate Committee on Foreign Affairs, 97th Cong., 1st Sess. (February 17 and 18, 1981) 34

Hearings Before the Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee on HR 11315: Jurisdiction of U.S. Courts in Suits Against Foreign States, 94th Cong., 2d Sess. (1973) 31

Hearings Before the Subcommittee on Claims and Governmental Relations of the House Judiciary Committee on H.R. 3493: Immunities of Foreign States, 93rd Cong., 1st Sess. (1973) 31

Hearings Before the Subcommittee on Separation of Powers of the Senate Committee on the Judiciary, Congressional Oversight of Executive Agreements—1975, 9t4h Cong., 1st Sess. (1975) 32

Henkin, Foreign Affairs and the Constitution (1972) ..16-17

H.R. Rep. No. 84-624, 84th Cong., 1st Sess. (1955), reprinted in [1955] U.S. Code Cong. & Ad. News 2745 24

H.R. Rep. No. 94-1487, 94th Cong., 2d Sess. (1976) 30

H.R. Rep. No. 95-459, Trading With the Enemy Act Reform Legislation, 95th Cong., 1st Sess. (1977) 10

5 Miller, Treaties and Other International Acts of the United States of America 16

Moore, International Law Digest (1906) 16, 18, 22, 23, 26

Moore, Treaties and Executive Agreements, Pol. Science Q. 385, reprinted at 62 Cong. Rec. 13063-68 (Sept. 21, 1922) 16, 18

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Restatement (Second), Foreign Relations Law of the United States
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8 Whiteman, Digest of International Law (1967) 26

14 Whiteman, Digest of International Law (1970) 18

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BRIEF OF INTERVENOR BANK MARKAZI IRAN

Executive Orders and Regulations Involved

In addition to the authorities set forth in the petition at 2-3, this case involves the following executive orders and regulations: Executive Order No. 12170, 44 Fed. Reg. 65729; Iranian Assets Control Regulations, 31 C.F.R. Part 535, §§ 535.201, 535.203(e), 535.418, 535.504, 535.805, which are set forth in Appendix C to this brief.

Statement of the Case

On November 14, 1979, the President of the United States, acting pursuant to the International Economic Emergency Powers Act (IEEPA), 50 U.S.C. §§ 1701-1706, declared a national emergency and ordered blocked "all property and interests in property of the Government of Iran, its instrumentalities and controlled entities and the Central Bank of Iran which are or become subject to the jurisdiction of the United States. . . ." Executive Order No. 12170, 44 Fed. Reg. 65729. The President further authorized the Secretary of the Treasury to employ all powers granted to the President under the IEEPA to carry out the blocking order. The Treasury Department thereupon promulgated regulations, effective November 14, 1979, prohibiting, absent a license or authorization, any attachment, injunction, judgment or other judicial process against property in which Iran or its entities had an interest. 31 C.F.R. §§ 535.201, 535.203(e) (1980). On November 19, 1979, the Treasury Department issued a regulation stating: "the provisions of this part and any rulings, licenses, authorizations, instructions, orders or forms issued thereunder may be amended, modified or revoked at any time." 31 C.F.R. § 535.805 (1980).

Subsequently, the Treasury Department authorized certain judicial proceedings against Iran, but prohibited the "entry of any judgment or any decree or order of similar or analogous effect. . . ." 31 C.F.R. § 535.504(a),(b)(1) (1980). On December 19, 1979, the Secretary issued a clarifying regulation which stated:

> The general authorization for judicial proceedings contained in § 535.504(a) includes pre-judgment attachment. However, § 535.504(a) does not authorize payment or delivery of any blocked property to any court, marshal, sheriff, or similar entity, and any such

> transfer of blocked property is prohibited without a specific license. It would not be consistent with licensing policy to issue such a license.

31 C.F.R. § 535.418 (1980).

On December 20, 1979, petitioner filed suit in the United States District Court for the Central District of California against the Government of Iran, Bank Markazi Iran, and other Iranian instrumentalities. The district court issued writs of attachment against the property of the defendants, including Bank Markazi. Additional writs of attachment were issued and served on January 4, February 4, and May 12, 1981. In no instance, however, were the attached assets actually turned over to a sheriff or other authority.

On January 19, 1981, the governments of the United States of America and the Islamic Republic of Iran formally adhered to the so-called "Algerian Declarations" [1] as a means of settling certain outstanding disputes between the two governments and their respective nationals. The Declarations require the United States "to terminate all legal proceedings in the United States courts involving claims of United States persons and institutions against Iran and its enterprises, to nullify all attachments and judgments obtained therein, [and] to prohibit all further litigation based on such claims . . ." Declaration I, Principle B. The United States further agreed to "bring about the transfer" or to "arrange for the transfer" of all Iranian assets in the United States or in the custody of persons

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[1] There were two Declarations: the "Declaration of the Government of the Democratic and Popular Republic of Algeria" (Declaration I), and the "Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran" (Declaration II). The Declarations are set forth in the Appendix to the Petition (Pet. App.) at A-21 to A-35.

subject to the jurisdiction of the United States, either immediately or by no later than July 19, 1981.

The Declarations further provide that, with certain exceptions, all claims of United States nationals against Iran or Iranian governmental entities are to be submitted to an international arbitration tribunal which has been established by the two countries. Iran has undertaken to pay in full all awards rendered by the tribunal and to attempt prearbitration settlement of claims. Iran further has agreed: (1) that its assets in the United States will be used to establish a $1 billion escrow fund as security for the satisfaction of the arbitration awards; (2) that it will maintain a minimum balance of $500 million as the initial sums are used to pay awards; (3) that the arbitration awards will be enforceable in the courts of any nation; (4) to the transfer of approximately $1.418 billion of its assets in escrow as security for the payment of principal and interest on nonsyndicated loans to United States banks as well as any other disputed amounts of principal or interest due to United States banks, the amounts to be ascertained by negotiations and, failing that, by arbitration. Iran already has paid in full principal and interest on all syndicated loans involving United States banks.

On January 19, 1981, President Carter issued a series of executive orders implementing the terms of the Algerian Declarations. Executive Order Nos. 12276-12285 (46 Fed. Reg. 7913-7932) (Pet. App. at A-36 to A-51). In pertinent part, these orders revoked all licenses for attachments and other restraints with respect to Iranian assets, nullified all non-Iranian interests in such assets subsequent to the November 14, 1979 blocking order, and required those holding blocked Iranian assets to transfer them to the Federal Reserve Bank of New York "to be held or transferred as directed by the Secretary of the Treasury." See Executive Order No. 12279, 46 Fed. Reg. 7919. On February 24, 1981, President Reagan "ratified" the January 19 orders, and

additionally "suspended" all "claims which may be presented to the [Tribunal]" and provided that such claims "shall have no legal effect in any action now pending in any court of the United States." Executive Order No. 12294, 46 Fed. Reg. 14111 (Pet. App. at A-52).

On February 18, 1981 the district court entered summary judgment in favor of petitioner against two defendants: the Government of Iran and the Atomic Energy Organization of Iran (Pet. App. at A-13). Subsequently, the United States filed a Statement of Interest setting forth the terms of the Algerian Declarations and implementing orders and regulations and requesting that the district court vacate the attachments and judgments and stay the litigation.

In response, on April 28, 1981 petitioner filed a separate action in the United States District Court for the Central District of California against Secretary of the Treasury Donald T. Regan and the United States of America, seeking a declaratory judgment that the Executive's actions in entering into and implementing the Algerian Declarations were unlawful. Petitioner further sought injunctive relief prohibiting the Executive branch from implementing the Declarations with respect to petitioner's pending action against the Iranian defendants in the Central District of California.

The district court consolidated its consideration of the two cases. On May 28, 1981, the district court upheld the action of the Executive branch implementing the Algerian Declarations. The court dismissed petitioner's action against the Secretary of the Treasury and the United States, vacated the prejudgment attachments against the Iranian defendants, stayed the summary judgment against the Government of Iran and the Atomic Energy Organization of Iran, and stayed further proceedings in the underlying action against the Iranian defendants (Pet. App. at A-106, A-161). The district court certified to the court of

appeals the question of the Executive's statutory and constitutional authority to implement the Declarations. Petitioner noticed and docketed its appeal to the United States Court of Appeals for the Ninth Circuit (Pet. App. at A-164), and then filed a petition for a writ of certiorari before judgment. On June 11, 1981, this Court granted certiorari, and granted the motions of Bank Markazi Iran, the Islamic Republic of Iran, and the Atomic Energy Organization of Iran to intervene.

Summary of Argument

The President had the power under the IEEPA to order the transfer of the blocked Iranian assets to the Federal Reserve Bank for disposition in accordance with the terms of the Algerian Declarations. The President previously had exercised federal control over the assets when he issued his original blocking order on November 14, 1979. The Treasury Department's conditional license permitting petitioner to seek attachments against Iranian assets was, by its terms, revocable at any time. Thus, when petitioner obtained its attachment after the President had exercised federal control over the assets, it did so subject to the paramount Federal authority conferred by the IEEPA. This Court's decision in *Orvis* v. *Brownell*, 345 U.S. 183 (1953), is dispositive in upholding the Executive's actions.

The President also had constitutional authority under his foreign affairs power to settle the claims of United States nationals against Iran by submitting the claims to binding international arbitration. The Executive practice of settling claims of United States nationals against foreign states has been exercised throughout the nation's history, both in the era of absolute sovereign immunity of foreign states as well as the era of restrictive immunity. It has been exercised with respect to claims against foreign states as well as claims against nationals of foreign states,

and with respect to claims arising out of contractual or other commercial activity, as well as claims arising out of nationalizations or expropriations. And it has been exercised in situations in which the United States nationals opposed the intervention of the Executive, as well as situations in which United States nationals requested such intervention.

Congress repeatedly and consistently has acquiesced in, approved of and facilitated the Executive's exercise of the claims settlement powers, in all of the situations outlined above. And this Court, as well as the lower federal courts, likewise has recognized and approved the Executive's exercise of the claims settlement power. *United States* v. *Belmont,* 301 U.S. 324 (1937), *United States* v. *Pink,* 305 U.S. 203 (1942), *Ozanic* v. *United States,* 188 F.2d 288 (2d Cir. 1951).

Enactment of the Foreign Sovereign Immunities Act of 1976 (FSIA) 28 U.S.C. § 1602, *et seq.*, did not restrict the Executive's claims settlement power. The FSIA codified the restrictive theory of sovereign immunity, which had been followed by the Executive since at least 1952. It provided that determinations of immunity pursuant to that theory henceforth would be made by the courts, not by the State Department. Neither the Executive branch, which requested enactment of the FSIA, nor the Congress assumed that the FSIA would restrict the Executive's foreign affairs powers, including the claims settlement power. Indeed, the very Congress which enacted the FSIA also considered and, at the urging of the Executive branch, rejected legislation intended to restrict the President's power to enter into Executive agreements, including claims settlement agreements. Moreover, subsequent to the enactment of the FSIA, Congress continued to acknowledge, acquiesce in and facilitate the Executive's claims settlement authority.

Finally, petitioner has suffered no compensable loss by the Executive's actions in vacating the attachments and

transferring the assets, because petitioner's attachments from their inception were subject to paramount federal control under the IEEPA. It is premature and wholly speculative as to whether petitioner will suffer a compensable loss by the referral of its claim to international arbitration. Moreover, if ultimately petitioner should suffer a compensable loss, it has an adequate remedy at law against the United States in the Court of Claims.

ARGUMENT

POINT I

The President Had the Constitutional and Statutory Authority in an Undisputed National Emergency to Order the Transfer of Blocked Iranian Assets to the Federal Reserve Bank of New York for Disposition in Accordance With the Terms of the Algerian Declarations, Notwithstanding Prior Attachments Against Such Assets Which Had Been Obtained Pursuant to a Revocable Treasury Department License Subsequent to the Order Blocking the Assets.

As the courts of appeals for the First and District of Columbia circuits have emphasized in recent decisions upholding the Executive actions at issue in this case,[2] the language of the IEEPA, by its terms, authorized the Executive's actions in ordering the transfer of the Iranian assets and the nullification of the attachments. The IEEPA grants the President broad powers to "deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of

[2] *Chas. T. Main International Inc.* v. *Khuzestan Water & Power Authority*, No. 80-1027 (1st Cir. 1981); *American Int'l Group Inc.* v. *Islamic Republic of Iran*, No. 80-1779 (D.C.Cir. 1981).

the United States with respect to such threat." 50 U.S.C. § 1701(a). Among those powers, the President may "direct and compel, nullify, void . . . any acquisition . . . transfer, withdrawal, transportation . . . or exercising any right, power or privilege with respect to . . . any property in which any foreign country or national thereof has any interest." 50 U.S.C. 1702(a) 1(B).

The executive orders "direct[ing] and compel[ling]" the transfer of Iranian assets to the Federal Reserve Bank of New York for disposition in accordance with the terms of the Algerian Declarations fall squarely within the mandate of § 1702. Similarly, the executive orders nullifying any right, power, or privilege in Iranian property in the United States derived from any outstanding attachment or injunction, and prohibiting the exercise of any such right, power or privilege, track the precise language of the statute.

Petitioner concedes that the language of the statute "is sweeping in breadth" (Pet. at 21), and offers no construction contrary to that adopted by the Secretary of the Treasury and the First and District of Columbia Circuits. Instead, relying on the intent of Congress to restrict Executive power in ways not relevant to the present case, petitioner argues that the words of the IEEPA do not mean what they say, but instead were meant to deprive the Executive of the very powers explicitly set forth in the statute.

The historical background and the legislative history of the IEEPA belie petitioner's argument. The IEEPA was enacted in 1977 as a peacetime alternative to the Trading With the Enemy Act (TWEA), 50 U.S.C. App. § 5(b), which was reenacted at the same time solely as a wartime measure. With several limited exceptions, which are not relevant here,[3] IEEPA granted the President

[3] The IEEPA's principal restrictions on the President's power are not substantive but procedural. The President cannot use the powers contained in the IEEPA unless he declares that a national

broad powers which "basically parallel" the TWEA,[4] to be exercised in times of national emergency short of war.

In particular, the language of section 1702(a)(1) of the IEEPA, the provision upon which the Executive relies in the present case, was adopted *verbatim* from section 5(b) of the TWEA. The powers conferred by that language have long "be[en] given [a] generous scope," *Propper* v. *Clark,* 337 U.S. 472, 581 (1949), and have been held to authorize a wide variety of actions, including nullifying contracts entered into prior to a freezing order, *Alexewicz* v. *General Anidine & Film Corp.,* 43 N.Y.S.2d 713 (Sup. Ct. 1943), as well as the freezing and blocking of assets, *Sardino* v. *Federal Reserve Bank,* 361 F.2d 106 (2d Cir.), *cert. denied,* 385 U.S. 898 (1966); *Propper* v. *Clark.* Indeed, as the First and District of Columbia Circuits held, the actions of the President in the present context are "virtually identical" [5] to actions the President took pursuant to the same statutory language with respect to Japanese and German assets prior to and after World War II, actions which this Court upheld in *Orvis* v. *Brownell,* 345 U.S. 183 (1953).

Just prior to World War II, the Executive exercised its powers under § 5(b) of TWEA by blocking the assets of German and Japanese nationals, but granting limited

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emergency exists, and makes a formal report to Congress setting forth the reasons for his declaration and the actions he has taken. 50 U.S.C. § 1703(a)-(c). Congress can then reject the President's declaration of an emergency by joint resolution of both houses. 50 U.S.C. § 1706(b).

The two major substantive powers which were contained in the TWEA, but eliminated from the IEEPA, were the power to vest, *i.e.,* to take title to foreign property, and the power to regulate purely domestic transactions. H.R. Rep. No. 95-459, *Trading With the Enemy Act Reform Legislation,* 95th Cong. 1st Sess. at 15 (1977). The other § 5(b) powers not included in the IEEPA were the power to regulate gold and bullion and to seize records.

[4] H.R. Report No. 95-459 at 14-15.

[5] *Chas. T. Main International,* typescript op. at 10.

consent to the attachment of such assets. The blocking orders remained in effect throughout the war. At the conclusion of the war, under new statutory authority contained in the War Powers Act of 1941, 55 Stat. 838,[6] the Executive issued further orders vesting the assets in the United States and directing and compelling their transfer to the Alien Property Custodian.

In *Zittman* v. *McGrath* (I), 341 U.S. 446 (1951), the Court held that the vesting order itself did not extinguish the attachments on the attached property, since the United States had taken title to the assets subject to existing liens or encumbrances. In *Zittman* v. *McGrath* (II), 341 U.S. 471 (1951), however, the Court held that the Alien Property Custodian nevertheless could "direct and compel" a garnishee bank to transfer to the Custodian assets which had been attached pursuant to the earlier general assent, stating:

> In view of these facts, we decide, and decide only, that the Custodian has power to possess himself of the funds and to administer them. To hold otherwise would be incompatible with the federal program.

341 U.S. at 474.

The question of the Custodian's right and power to deal with the transferred assets in the light of the attachments

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[6] Until 1941, section 5(b) of the TWEA did not contain the "direct and compel" language, but only provided the President with power to "investigate, regulate or prohibit any transfers in foreign exchange . . . ", the language now contained in subsection A of section 1702(a)(1) of the IEEPA. 40 Stat. 411 (1917), 50 U.S.C.A. App. section 5 (B). The War Powers Act of 1941 amended section 5(b) essentially by adding two provisions. The first was the language now contained in subsection B of section 1702(a) of IEEPA, authorizing the President to "direct, compel, nullify [and] void", etc., any interests in property of a United States national in which a foreign nation or national has an interest. The second permitted the Executive branch to vest title of such foreign assets in the United States, a power which has been deleted from the IEEPA.

was resolved in *Orvis* v. *Brownell,* 345 U.S. 183. There, the Court held that a creditor who had obtained an attachment after the original blocking order, pursuant to the Executive's general limited assent to attachments, did not acquire an interest in the property to support a claim against the Custodian. The plaintiff creditor had attached a debt owing to a Japanese national and sought to assert its claim against the Custodian, who had acquired possession of the attached assets by the same type of turnover order involved in *Zittman II.* The Court held that:

> While [the freezing order] recognized attachment liens insofar as they determined relationships between creditor and enemy debtor, it did not permit the transfer of a property interest in the blocked funds which could be asserted against the Custodian.

The Court emphasized that the original assent permitting attachment of blocked property was limited and conditional and that the President had the authority to revoke or disregard the assent and to utilize the property in furtherance of a general claims settlement:

> [T]he general assent by the Government to state attachment procedures which we recited in the *Zittman* opinion did not extend so far as to recognize them as effecting a transfer. To so interpret it would ignore the express conditions on which the consent was extended. Realistically, these reservations deprive the assent of much substance; but that should have been apparent on its face to those who chose to litigate. The opportunity to settle their accounts with the enemy debtor was all that the permission to attach granted.

Orvis v. *Brownell,* 345 U.S. at 187.

The Executive's power to "direct, compel, nullify, void, or transfer" assets enabled the Custodian to dispose of the assets regardless of judicial attachments, a power independent of and separate from his power to "vest" the assets.

Orvis, 345 U.S. at 188. See also, *Brownell* v. *Singer,* 347 U.S. 403 (1954), upholding the similar action of the Custodian in the face of a state court judgment and an attempt to execute the judgment on previously attached assets.

The *Zittman-Orvis-Brownell* line of cases is directly relevant here. The Executive has "directed and compelled" the turnover of Iranian assets to the Federal Reserve Bank. His turnover demand rests on the identical statutory language which was held to authorize the turnover demands in *Orvis.* See 345 U.S. at 188, and n.6.

The Iranian regulatory scheme was designed to serve the same purpose as the World War II freezing controls. The assets were blocked to permit the Executive to gain control over the assets, as against Iran, on the one hand, and against American claimants, on the other, so that the Executive could utilize the assets to protect the economic and foreign policy interests of the nation. *See Sardino* v. *Federal Reserve Bank of New York,* 361 F.2d 106 (2d Cir. 1966); *Nielson* v. *Secretary of the Treasury,* 424 F.2d 833 (2d Cir. 1970). Attachments were conditionally permitted, if otherwise valid, but the existence of an attachment did not permit the creditor to block the transfer of funds by the Executive to further the overriding interests of the United States. To have allowed the assets to be transferred to the sheriff would have interfered with the Executive's ability to utilize the assets in the interests of United States foreign policy in the future. As Judge Bryan held in vacating attachments pursuant to the Algerian Declarations in *Unidyne Corp.* v. *Government of Iran,* No. 80-029-A (E.D. Va. March 30, 1981), slip op. at 7:

> It would be meaningless to recognize the power of the President to negotiate with frozen Iranian assets if he did not also have the power to transfer them at the conclusion of the negotiations. The release of the attachments is a necessary concomitant of the President's foreign relations power under the Constitution

and is further authorized by Congress under the IEEPA.

Petitioner in effect attempts to relitigate the *Orvis* case, which it improperly fails to cite. Like the claimant in *Orvis,* petitioner fastens on the fact that if the President vested assets under the TWEA, he was required to use those assets to pay valid claims of United States creditors against the former owners of the assets. From this, again like the claimant in *Orvis,* petitioner asserts that under the TWEA, and hence under the IEEPA, the President could not direct or compel the transfer of the blocked assets in the face of attachments or other liens obtained by such creditors after the blocking order. *Orvis* held that regardless of whether or not the President had vested the assets, the statute enabled the President to direct or compel the transfer of the assets in furtherance of the paramount federal interests in the assets obtained by the initial blocking order.

The IEEPA's elimination of the Executive's vesting power in non-war time situations does not affect this Court's holding in *Orvis.* The right of Americans to pursue their claims against the Custodian derived directly from the act of vesting: vesting was a power to be exercised *against* the foreign state and in favor of the American creditors. By eliminating the vesting power, Congress restricted the Executive's power only against foreign states and foreign nationals whose property would be subject to Executive regulation. Thus, under IEEPA the Executive retained the right to direct, compel, nullify, void or transfer, etc., interests in foreign property claimed by persons subject to the jurisdiction of the United States, as well as his power to block or restrict a foreign state's *use of* its property in the United States. Under IEEPA, however, the Executive was stripped of his power to oust a foreign state or its nationals of *their* property interests, for the benefit of American claimants.

Under the current circumstances, the Executive acted precisely within the authority conferred by the IEEPA. After blocking Iran's use of its property in the United States, the Executive nullified and voided the interests in such property claimed by American nationals and directed and compelled the transfer of such property to the Federal Reserve Bank of New York for disposition in accordance with the international agreement. The President did not attempt to vest the property in the United States, and thus was not required to dispose of the vested property by satisfying claims of United States nationals.[7]

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[7] Petitioner argues that the Executive's actions in voiding attachments and injunctions and transferring Iranian assets had the effect of depriving Article III courts of jurisdiction over attachments and other provisional remedies. Petitioner would have the Court believe that somehow either the Constitution or the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. §§ 1602, *et seq.*, establishes a substantive right to such provisional remedies. There is, of course, no constitutional right to a prejudgment attachment. Nor does the FSIA provide a substantive right to an attachment. The source of provisional remedies remains state law. The FSIA, in fact, establishes strict limitations on the power of a federal court to apply state law provisional remedies against a foreign sovereign and its entities, particularly a central bank. See 28 U.S.C. §§ 1610(d), 1611(b).

The effect of the Executive's actions, pursuant to the IEEPA, of nullifying state law provisional remedies and of requiring the transfer of Iranian assets, is to establish a new federal rule of law. Under the supremacy clause, the federal rule of law takes precedence over state law provisional remedies, in the same way as, for example, the restrictions imposed by the FSIA upon ordinary state law provisional remedies take precedence, and the federal courts must apply the federal law. *United States* v. *Schooner Peggy*, 5 U.S. (1 Cranch.) 103 (1801); *Orvis* v. *Brownell*, 345 U.S. 183 (1953). In so doing, the federal courts act ***within*** their jurisdiction under Article III. See discussion, *post* at 25-29.

POINT II

The Executive Branch Has the Constitutional Authority in Undisputed National Emergencies to Submit the Claims of United States Nationals Against Foreign States to Binding International Arbitration, to Further the Settlement of Disputes With Such Foreign States.

A. *There Exists a Systematic, Unbroken Executive Practice, Acquiesced in and Approved by Congress, by Which the Executive Branch Has Waived or Settled Claims of United States Nationals Against Foreign States and Their Nationals.*

As both the First Circuit and the District of Columbia Circuit recognized,[8] the unbroken historical understanding and practice of all three branches of the United States government, dating back to at least 1794, supports the power of the Executive branch to enter into international agreements, in furtherance of the foreign power interests of the United States, settling or disposing of claims of United States nationals against foreign states or their nationals. See *United States* v. *Belmont*, 301 U.S. 324, 329-30; *United States* v. *Pink*, 315 U.S. 203, and 240 (Frankfurter, J., concurring); Henkin, *Foreign Affairs and the Constitution* 262 (1972); 5 Miller, *Treaties and Other International Acts of the United States of America* 1079 (1934); 6 Moore's *International Law Digest* § 1056 at 1022-25 (1906); J.B. Moore, *Treaties and Executive Agreements*, Sept. 1905 Pol. Science Q. 385, reprinted at 62 Cong. Rec. 13063-68 (Sept. 21, 1922).

While one purpose of the claims settlement power undoubtedly is to protect, to the extent possible, the private interests of American claimants, the principal justification for the power is to enable the Executive to settle international disputes with foreign states through peaceful means and to achieve a state of international amity.

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[8] *Chas. T. Main International, Inc.*, typescript op. at 16-20; *American International Group*, slip op. at 27-32.

> The continued mutual amity between the nation and other powers again and again depends upon a satisfactory compromise of mutual claims; the necessary power to make such compromise has existed from the earliest times and has been exercised by the foreign offices of all civilized nations.

Ozanic v. *United States*, 188 F.2d 288, 231 (2d Cir. 1951) (L. Hand, J.); see also *United States* v. *Pink*, 315 U.S. 203, 240 (Frankfurter, J., concurring); *Gray* v. *United States*, 21 Ct. Cl. 340, 344-45, 392 (1886). Accordingly, the President has "sometimes disposed of the claims of citizens without their consent, or even without consultation with them, usually without exclusive regard for their interests, as distinguished from those of the nation as a whole." L. Henkin, *supra* at 263. See *Gray* v. *United States*, 21 Ct. Cl. 340, 392 (1886); *Comegys* v. *Vasse*, 26 U.S. (1 Pet.) 193 (1828). Indeed the Restatement (Second) of the Foreign Relations Law of the United States states as black letter law that:

> The President may waive or settle a claim against a foreign state based on the responsibility of the foreign state for an injury to a United States national, without the consent of such national.

ALI, Restatement (Second) of the Foreign Relations Law of the United States, § 213 (1965).

In order to convey fully the extraordinary breadth, consistency and clarity of the historic understanding and practice of claims settlement, we have attached two appendices to this brief. Appendix A is a partial list of Executive agreements and treaties settling claims of United States nationals against foreign states and foreign nationals.[9] Appendix B provides an account of congressional responses

[9] We have specified the dates of the agreements, the parties, a description of the claims settled or waived, whether the settlement provided for a mixed commission or arbitration panel to determine the claims, and whether the agreement contained explicit provisions that decisions of the commission or panel would be binding.

to specific Executive agreements and to the general practice of the Executive in settling claims.

As i apparent from Appendix A, the Executive has proceeded to enter into claims settlement agreements both with and without Senate ratification. Senate ratification was a more common practice in the nineteenth century than in the twentieth. As Secretary of State Cass stated in 1859, "the Executive sought the formality of Senate ratification when it was deemed expedient" and did not in any manner feel compelled to do so by the Constitution. 5 Moore, *International Law Digest* 221-22 (1906). In the twentieth century, "it has not been the practice of the Department of State to obtain the approval of the Senate for the settlement of international claims, and a request for congressional action is not made unless appropriations appear to be necessary." 14 M. Whiteman, *Digest of International Law*, 247 (1970). See also J.B. Moore, *Treaties and Executive Agreements, supra*, 62 Cong. Rec. at 13066.

Appendix B demonstrates that from the earliest days of the Republic right up to the Algerian Declarations themselves, Congress has been informed about the Executive's claims settlement actions, and has acquiesced in and even facilitated the Executive's actions.

This consistent, historic pattern and practice of executive action under a claim of constitutional right and congressional acquiescence and approval of that practice has the greatest import for the constitutional arguments made by petitioner. Particularly with regard to questions of the division of powers between the branches of government, an historic practice and understanding as consistent and dramatic as this is dispositive. As Justice Frankfurter wrote in an oft-cited passage in his concurrence in *Youngstown Sheet & Tube Company* v. *Sawyer*, 343 U.S. 579, 610-11 (1952):

> In short, a systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and

> never before questioned, engaged in by Presidents who have also sworn to uphold the Constitution, making as it were such exercise of power part of the structure of our government, may be treated as a gloss on "executive Power" vested in the President by §1 of Art. II.

See also the concurring opinion of Jackson, J., 343 U.S. at 636-37; *United States* v. *Midwest Oil Company*, 236 U.S. 459, 472-73 (1915); *Stuart* v. *Laird*, 5 U.S. (1 Cranch) 299, 309 (1803).

Petitioner attempts to avoid the force of the historic claims settlement practice and of the doctrine reaffirmed by Justice Frankfurter in *Youngstown* by asserting that most of the Executive claims settlements occurred during the era of the "absolute" theory of sovereign immunity, when, petitioner suggests, United States claimants presumably had no right, and thus no property interests, in their foreign claims. In addition, petitioner argues that prior settlement agreements arose from non-commercial claims such as nationalizations, under which foreign states still retain immunity even under the restrictive theory of sovereign immunity.

Petitioner's argument cannot withstand historical analysis, as the District of Columbia Circuit emphasized in the *American International Group* case (slip op. at 30).

First, petitioner ignores the primary justification for the claims settlement power, *i.e.*, the responsibility of the Executive for the "rehabilitation of relations between the country and another nation". *United States* v. *Pink*, 315 U.S. at 240 (Frankfurter, J., concurring). The fact that in the era of the restrictive theory of sovereign immunity United States claimants may have a greater ability to pursue their claims against foreign states, independently of the United States government, in no way derogates from the necessity for the Executive's claims settlement power. Indeed, in the modern era there is a greater danger that

the claims of United States nationals could become a major impediment to the normalization of international relations and to world peace. Thus, it is even more essential that the Executive retain the power to settle those claims through diplomatic means as a step towards furthering the interest of the entire nation in peaceable international relations. As the First Circuit emphasized in *Chas. T. Main:*

> This case well illustrates the imperative need to preserve a presidential flexibility sufficient to diffuse an international crisis, in order to prevent the crisis from escalating or even leading to war. As the Supreme Court has consistently recognized, it is the President who is charged with rsponsibility as the United States' representative and negotiator in the international arena. [Citations omitted]. The authority to remove impediments to the peaceful resolution of international disputes is an authority necessary to meet the responsibilities of presidential office, and, in the words of the Supreme Court, a "modest implied" attribute of presidential power.

Chas. T. Main International, typescript op. at 19-20.

Second, contrary to petitioner's intimations, the Executive claims settlement practice has been pursued vigorously and with the knowledge, acquiescence and facilitation of Congress, since the State Department adopted the restrictive theory of sovereign immunity in 1952.[10] See Appendix A. During the period since 1952, moreover, the Executive has settled not only nationalization and expropriation claims, but commercial contract claims as well. See, Agreement between the United States and the Polish Peoples Republic, 11 U.S.T. 1952, T.I.A.S. No. 4545 (1960); Agreement between the United States and the Romanian Peoples Republic, 11 U.S.T. 317, T.I.A.S. No. 4451 (1960);

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[10] The restrictive theory was formally adopted in the so-called "Tate Letter", 26 Dept. of State Bull. 984 (1952).

Agreement between the United States and the Peoples Republic of Bulgaria, 14 U.S.T. 969, T.I.A.S. No. 5387 (1963); Agreement between the United States and the Hungarian Peoples Republic, 24 U.S.T. 552, T.I.A.S. No. 7569 (1973); Agreement between the United States and Peru, 25 U.S.T. 227, T.I.A.S. No. 7792 (1974).

Third, even before the advent of the restrictive theory of sovereign immunity, the Executive settled claims of United States nationals which were enforceable as a practical matter. Throughout the nation's history the Executive, in furtherance of its foreign policy power, settled claims of United States nationals against, *inter alia*, citizens and nationals of foreign states who were not entitled to immunity, as well as foreign states which had waived their immunity or otherwise had recognized the right of United States nationals to compensation. *See*, for example, *United States* v. *Schooner Peggy*, 1 Cranch 103, 110 (1801); *Gray* v. *United States*, 21 Ct. Cl. 340 (1886); *Meade* v. *United States*, 2 Ct. Cl. 224 (1886), *aff'd*, 9 Wall 691 (1869); *In Re Atocha*, 17 Wall 439 (1873); *Ship Apollo* v. *United States*, 35 Ct. Cl. 420 (1900); *United States* v. *Pink*, 315 U.S. 203 (1942). See also Appendix A to this Brief. Thus, in *Schooner Peggy*, the United States waived the claims of United States citizens to a foreign ship which a United States circuit court of appeals had held was properly condemned as a prize. In *Gray*, a United States merchant had a valid cause of action against a French privateer in the French courts, and, indeed, the French courts held substantial security to satisfy his claim. The claim nevertheless was waived by the United States in its entirety.

Further, even claims not assertable in courts of law were still considered things of value to the claimant in that sovereigns—including, of course, the United States, which also asserted absolute immunity in this period—frequently felt bound for reasons of principle and credit standing to

acknowledge and settle the claims against them as a matter of grace. *See*, for example, *Meade* v. *United States;* 5 Hackworth, *Digest of International Law*, 501-03, 506-07, 509, 520-21, 524, 611 (1943); 6 Moore, *International Law Digest*, 676-78 (1906); *The Ship Tom*, 29 Ct. Cl. 68, 88-89 (1894); *The Brig Freemason* v. *United States*, 45 Ct. Cl. 555, 562, 566 (1910). Thus, as a practical matter, claims settlement agreements compromised or waived claims which were valuable even prior to the adoption of the restrictive theory.

In short, the Executive's power to settle claims, whether by executive agreement or treaty, was never limited either theoretically or in practice by the nature of the foreign claim or the practical or legal ability of the United States claimants to obtain satisfaction in the absence of the claims agreement. Thus, the advent of the "restrictive" theory of sovereign immunity, to the extent that it narrowed the legal basis upon which a foreign state could resist judicial enforcement of a claim by a United States national, had no effect whatsoever on the entirely separate question of the powers of the Executive to settle such claims under the foreign affairs powers.

B. *The Courts Have Recognized and Upheld the President's Constitutional Powers to Waive and Settle Claims of United States Nationals.*

The federal judiciary, including this Court, has expressly recognized, approved and given effect to Executive actions settling foreign claims of United States nationals, both by treaty and executive agreement. Thus, for example, in *The Schooner Peggy*, the Court upheld a claims settlement agreement with France providing that property captured as a prize by United States nationals, but not yet "definitively condemned" by the courts, must be restored to its French ownership. The Court set aside the lower court's judgment upholding the condemnation order, and ordered that the French ship be returned. Similarly, in the *Gray* case, the Court of Claims stated:

> [I]n the negotiation of 1800 we used "individual" claims against "national" claims, and the set-off was of French national claims against American individual claims. That any Government has the right to do this, . . . or to take other action, which, at the expense of the individual, is most beneficial to the whole people, is too clear for discussion.

21 Ct. Cl. at 392. *See also, Great Western Insurance Co. v. United States,* 112 U.S. 193 (1884).

This Court initially considered the first executive agreement of the modern era waiving and settling claims—the 1933 Agreement with the Soviet Union—in *United States v. Belmont,* 301 U.S. 324 (1937). The unanimous Court took specific note of the long historic practice of the Executive settling claims precisely in the manner done here, referring to the compilation of those executive agreements in Moore, *International Law Digest, supra,* and held that such international compacts did not require the participation of the Senate. 301 U.S. at 330-31.

The Court returned to the 1933 Agreement in *United States v. Pink,* 315 U.S. 203. It reaffirmed its holding in *Belmont* that the Executive could act alone to settle claims of United States citizens. It rejected the further challenge that the Executive could not reach an agreement cutting off interests in Soviet property held in the United States, including interests secured by attachments and judgments, and requiring the individuals holding such claims to obtain relief from a general fund to be administered and distributed according to a program established by the political branches.

Justice Frankfurter, concurring in *Pink,* explicity stated "that the President's control of foreign relations includes the settlement of claims is undisputable." 315 U.S. at 204. Justice Stone, writing for himself and two other Justices, dissented, but in no manner disagreed with the proposi-

tion that the Executive had the constitutional authority to settle claims and cut off property interests when necessary to do so. Rather, his dissent was based exclusively upon his view that the Litvinov agreement did not purport to cut off such property interests and did not require such an effect to accomplish its purposes.

Petitioner seeks to distinguish *Pink* on the ground that the interests in property cut off by the action of the President in that particular case belonged to foreign nationals and corporations. The distinction is meaningless. While, as the *Pink* Court stated, in settling claims the President may favor United States nationals over foreign nationals, the President's power to settle claims and to cut off interests in property within the United States is the same in either instance. The Court in *Pink* acknowledged that under New York law the foreign nationals had a property interest in the assets in question, that the foreign nationals were entitled to the full protection of the Fifth Amendment, and that the foreign nationals had a constitutional right to access to the courts. Nevertheless, the Court held that the executive agreement cutting off the rights of the foreign nationals to the assets in question was valid and had to be given full effect. Indeed, the Litvinov assignments cut off interests in the assets in question of United States nationals as well as foreign nationals, including interests secured by prejudgment attachment and judgments. See H. R. Rep. No. 84-624, 84th Cong., 1st Sess. (1955), reprinted in [1955] U.S. Code Cong. & Ad. News 2745, 2750. *See also* discussion in Appendix B, pp. B-14-15.

Belmont and *Pink* do not rest principally upon the constitutional power of the President to recognize foreign governments. In *Belmont,* the Court made specific reference to the historic practice of the Executive in settling claims with already recognized governments. In *Pink,* the Court spoke of the foreign policy power generally and of the underlying diplomatic and constitutional imperatives for

the Executive's authority to settle claims. In *Pink*, the President's action went beyond mere "recognition" of the Soviet Union; as the Court emphasized again and again, it constituted an effort of the President to normalize relations between two nations.

The point was recognized by the court in *Ozanic* v. *United States*, 188 F.2d 228, 231 (2d Cir. 1951), which held, in an opinion by Judge Learned Hand, that:

> The Constitutional power of the President extends to the settlement of mutual claims between a foreign government and the United States, at least when it is an incident to the recognition of that government; and it would be unreasonable to circumscribe it to such controversies.

In the present circumstances, the Executive's actions were undertaken in furtherance of the normalization of relations with a foreign state, actions which are committed to the President under his foreign affairs powers. There is no doctrinal or rational distinction between the action of the Executive in *Pink* and the action of the Executive in the present situation.

C. *The Executive Actions Do Not Violate Article III of the Constitution.*

Petitioner argues that the Executive's implementation of the Algerian Declarations improperly divests the federal courts of jurisdiction over valid cases and controversies in violation of Article III of the Constitution.

Petitioner mischaracterizes the meaning and effect of the Executive's actions. The Executive has not attempted to interfere with the "jurisdiction" of the federal courts over cases and controversies. Rather, acting within his Article II powers, he has "settled" such cases, principally by requiring United States nationals to submit their claims against Iranian entities to an international claims tribunal,

whose decision shall be final and binding. We already have noted that the United States claimants are "bound" by the settlement. Accordingly, there no longer remain live cases or controversies, within the meaning of Article III, over which the courts may exercise jurisdiction. *Chas. T. Main Intl.,* typescript op. at 14-16; *American International Group,* slip op. at 22-25. *See The Schooner Peggy; United States* v. *Pink.*

No Article III question is presented for another reason. Under international law, an agreement between one government and another waiving or settling the claims of nationals relieves the foreign state of any "further responsibility." *Restatement (Second) of the Foreign Relations Law of the United States,* §§205, 213.[11] The well-established practice of nations is to treat such agreements as lawful and binding. In addition to Appendix A, *see,* for example, 8 Whiteman, *Digest of Int'l Law,* § 37 at 1217-33; 6 Moore, *International Law Digest* 1004, 1012-1027; 7 Moore at 52, 58. Such a customary practice of nations, wide-spread and acquiesced in by the world community, constitutes international law. *The Paquete Habana,* 175 U.S. 677, 686 (1900); *Banco Nacional de Cuba* v. *Sabbatino,* 307 F.2d 845 (2d Cir. 1962), *rev'd on other grounds,* 376 U.S. 398 (1964); Statute of the International Court of Justice, Article 38(b); 1946-47 U.N. Yearbook 843.

"International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending on it are duly presented for their determination." *The Paquete Habana,* 175 U.S. 677, 700 (1900). *See also,* for example, *Ware* v. *Hylton,* 3 U.S. (3 Dall.) 199 (1796); *Filartiga* v. *Pena-Irala,* 630 F.2d 876, 886-87 (2d Cir. 1980); *Restatement (Second),* § 3. Accordingly, the *substantive*

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[11] *See also,* for example, Statement of Secretary of State Freylinghuysen (1884), in 6 Moore, *International Law Digest,* at 1015-16 (1906).

law applicable here relieves the Iranian defendants of any "further responsibility" than that provided for in the Algerian Declarations. An Article III challenge no more lies here than where there has been an accord and satisfaction under the applicable substantive law.

Conceptualized slightly differently, the President's exercise of his power to enter into claims settlement agreements in furtherance of foreign policy interests of the United States is such a fundamental and necessary aspect of the executive power as to be a political question over which the courts should not and may not exercise judicial review. *Baker* v. *Carr*, 369 U.S. 186, 217 (1962). The various rationales for application of the political question doctrine, expressed in the disjunctive by the Court in *Baker* v. *Carr*, merge here. First, the negotiating of claims settlement agreements as part of the United States foreign policy is committed to the Executive. It is necessary that the President have the power to settle claims if he is to be able to pursue overriding foreign policy goals for the nation as a whole. Similarly, no judicially manageable standard exists with which to adjudicate plaintiffs' claim. It is impossible for the judiciary to put itself in the place of the Executive to determine whether or not an overall agreement settling claims and otherwise normalizing relations with a foreign sovereign is necessary, appropriate or in the best interest of the nation and its citizens. Nor can a court procure the relevant evidence, much of which may be in the possession of foreign governments, some of which may be privileged. *See, Mitchell* v. *Laird*, 159 U.S. App. D.C. 344, 488 F.2d 611, 616 (1973).

In short, any effort by the courts to review an Executive claims settlement agreement necessarily would interject the court into a "policy determination of a kind clearly for non-judicial discretion," would express a "lack of respect" due the Executive branch, and would carry the potential for embarrassment and compromise of the Executive's role in foreign affairs. *Baker* v. *Carr*, 369 U.S. at 217.

The political question doctrine is not jurisdictional. Rather, it requires the judiciary to abstain from exercising its Article III jurisdiction over cases or controversies the resolution of which are committed to the political branches. *See Baker* v. *Carr*. In the present context, otherwise justiciable cases become non-justiciable once the Executive settled or compromised the claims in furtherance of the foreign policy interest of the United States. Such action does not deprive the federal courts of Article III jurisdiction.

Close analogies, and definitive answers to petitioner's Article III argument, are provided by the Act of State cases and the sovereign immunity cases decided prior to the enactment of the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1602, *et seq.*

In *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398 (1964), the Court held that the judiciary may not examine the acts of a foreign sovereign done on its own territory even though alleged to be a violation of international law, because to do so would interfere with the Executive's conduct of foreign relations, particularly its efforts in the case of Cuba to negotiate a settlement at some future date of the claims of United States citizens against Cuba. In the Court's view, there was no violation of Article III because the "constitutional underpinnings" of the Act of State doctrine placed primary reliance on the Executive's power and ability to settle claims diplomatically and recognized that judicial action could only interfere with the efforts of the Executive pursuant to its constitutional authority and responsibilities.

The point was dramatically re-emphasized by Justice Rehnquist in *First National City Bank* v. *Banco Nacional de Cuba*, 406 U.S. 759 (1972):

> The act of state doctrine, as reflected in the cases culminating in *Sabbatino*, is a judicially accepted limitation on the normal adjudicative processes of the courts, springing from the thoroughly sound principle

> *that on occasion individual litigants may have to forego decision on the merits of their claims because the involvement of the courts in such a decision might frustrate the conduct of the Nation's foreign policy.*

406 U.S. at 769 (emphasis added).

The sovereign immunity cases are to the same effect. From the early days of the Republic, the United States judiciary bowed to the suggestion of the Executive branch that certain suits against foreign sovereigns, *otherwise within the jurisdiction of the federal courts,* should not be entertained in United States courts. The courts held that determinations of questions of sovereign immunity were committed to the Executive branch as a political question, and that when the Executive suggests to a court that a foreign state be accorded immunity, "courts may not so exercise their jurisdiction." *Ex Parte Peru,* 318 U.S. 578, 588 (1943). *Accord, Compania Espanola de Navegacion Maritima* v. *The Navemar,* 303 U.S. 68, 74 (1938); *Spacil* v. *Crowe,* 489 F.2d 614 (5th Cir. 1974); *Rich* v. *Naviera Va Cuba,* 295 F.2d 24 (4th Cir. 1961).[12]

D. *The FSIA Does Not Alter the Executive's Historic Claims Settlement Powers.*

The FSIA does not have the slightest effect upon the independent Executive power to enter into claims settlement agreements binding upon the parties and, where provided, foreclosing parties from pursuing cases otherwise within the courts' jurisdiction. On its face, the FSIA deals only with the legal determination of whether, in a particular case, a foreign state is entitled to sovereign immunity. Nothing in either the FSIA itself or its legislative

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[12] The subsequent enactment of the Foreign Sovereign Immunities Act, of course, removed the power to make determinations of sovereign immunity from the Executive, and reposed it in the courts pursuant to clearly defined statutory criteria. The fact that the courts are now empowered to make these particular determinations, however, in no way alters the constitutional and jurisprudential significance of the prior practice.

history evidences the slightest suggestion that Congress intended to foreclose the President from settling claims independently of foreign sovereign immunity questions.

Congress was quite clear throughout the legislative process that it was addressing the single issue of sovereign immunity determinations in litigation against foreign states over which the United States courts had jurisdiction even prior to enactment of the FSIA.[13] Congress' repeated references to State Department involvement in such litigation were directed exclusively to the problems that both the Executive branch and Congress saw in connection with State Department participation in determinations of sovereign immunity questions. Both the Senate and House reports state: "since, however, this section deals *solely* with issues of immunity, it in no way affects existing law on the extent to which, if at all, the 'act of state' doctrine may be applicable." Senate Report No. 94-1310, 94th Cong., 2d Sess. 19 (1976) (emphasis added).

The Executive branch was instrumental in drafting the FSIA, and the Act "was introduced in accordance with the recommendations of an Executive communication." House Rep. No. 94-1487, 94th Cong., 2d Sess. at 6-7 (1976), reprinted in 1976 U.S. Code Cong. & Ad. News 6604-6605. If the Executive had intended to restrict its flexibility in international crises, including its constitutional power to settle claims, it would have so stated. Instead, to the contrary, the Legal Advisor to the State Department emphasized in testimony before the House Judiciary Committee that the FSIA would not impinge upon the President's historic powers to settle claims:

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[13] "Before the FSIA, plaintiffs enjoyed a broad right to bring suits against foreign states, subject only to State Department intervention and the presence of attachable assets." *Texas Trading and Milling Corp.* v. *Federal Republic of Nigeria*, No. 80-7703 (2nd Cir. April 16, 1981), slip op. at 2602. The courts had jurisdiction, pursuant to 28 U.S.C. § 1332(a), over "civil actions . . . between (2) citizens of a state and foreign states or citizens or subjects thereof."

> Well, the claims of the U.S. nationals against foreign governments are frequently taken up and espoused by the U.S. Government as, in effect, a diplomatic claim—through diplomatic channels and sometimes they are paid. We have had numerous claims agreements with foreign countries in recent years; general claims settlements as such and also very specific cases. So that is an option [to attachments or execution] which is a realistic one.

Hearings Before the Subcommittee on Claims and Governmental Relations of the House Judiciary Committee on HR 3493: Immunities of Foreign States, 93rd Cong., 1st Sess. 26 (1973).[14]

Indeed, at the same time that the 94th Congress was considering the FSIA, it also was considering two bills, never enacted, to limit the power of the Executive to enter into executive agreements without congressional or Senate approval. Representatives of the State and Justice Departments submitted testimony and legal arguments to the Senate Judiciary Committee opposing the bills, and supporting, in the strongest possible terms, the authority of

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[14] Similarly, Peter N. Trooboff, Co-chairman of the Committee on Transnational Judicial Procedure of the American Bar Association, in supporting the FSIA, urged that the pending legislation would not affect the conduct of United States foreign relations. He stated:

> The bill would not have any effect on those many other foreign policy issues over which the State Department has control and which it can influence—on its own initiative or in response to actions by other governments. In its relations with other foreign states, the Department will continue to have a free hand in dealing with those issues. Thus, enactment of this legislation will in no way weaken the ability of the Department of State, in my judgment, to conduct the foreign relations of this Nation.

Hearings Before the Subcommittee on Administration Law and Governmental Relations of the House Committee on the Judiciary on HR 11315: Jurisdiction of U.S. Courts in Suits Against Foreign States, 94th Cong., 2nd Sess. 60 (1976).

the President to enter into executive agreements, including claims settlement agreements. *See Hearings Before Senate Subcommittee on Separation of Powers of the Committee on the Judiciary, Congressional Oversight of Executive Agreements—1975*, 94th Cong., 1st Sess. (1975). In particular, the Legal Advisor to the State Department asserted in categorical terms the power of the President to enter into claims settlement agreements without the participation of Congress. *Id.* at 306-311. He argued that the two leading cases supporting the President's power were *Belmont* and *Pink*, and further stated that the power "has been recognized by the United States Supreme Court, the Congress, enumerable scholars, and by a consistent practice dating from the early days of the Republic." *Id.* at 302.[15] He advised the Committee that the bills would be an unconstitutional limitation upon the Executive's constitutional powers. *Id.* at 304.

It is inconceivable that at the very time the State and Justice Departments were asserting before Congress the power of the Executive branch to enter into claims settlement agreements, they intended to abrogate that power by drafting and recommending enactment of the FSIA, without ever suggesting that the FSIA would undermine the Executive's claims settlement power. It is equally inconceivable that the very Congress which, after deliberation, did not limit the Executive's authority, in the face of warnings that it would be unconstitutional to do so, nevertheless intended to and did so limit that authority without ever stating anywhere that that was the intent or purpose of Congress.

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[15] See also the legal memorandum of the Justice Department, which argued that the *Belmont* decision "was not a narrow one . . ." (Id. at 304), and the Legal Advisor's Reply Memorandum, which emphasized the early historical acceptance of the claims settlement power by Jefferson and Adams, as well as the modern authority (Id. at 402-413).

It is significant that at the time of the enactment of the FSIA, Congress did not disturb the President's powers under the Trading With the Enemy Act (TWEA), 50 U.S.C. App. §5b, to freeze assets, or to nullify, void or prohibit any interests or judgments obtained by United States nationals. In fact, at the time of the enactment of the FSIA, there existed regulations freezing the assets of certain foreign states, barring attachments or judgment against such assets, and even barring the institution of lawsuits under certain circumstances. *See* Cuban Assets Control Regulations, 31 C.F.R. §515 *et seq.*, especially §515.504. *See*, to the same effect, 31 C.F.R. §§212, 500.504.

It is equally significant that one year *after* enactment of the FSIA, the Congress reenacted the TWEA in its entirety for periods of declared war and enacted the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. §1702 *et seq.*, to be effective in periods of presidentially-declared emergencies. Congress explicitly recognized the continued vitality of the Executive's claims settlement power, stating that "nothing in this act [IEEPA] is intended by the committee . . . to impede the settlement of claims of U.S. citizens against foreign countries." Senate Rep. No. 95-466, 95th Cong., 2nd Sess. 6 (1977). Moreover, IEEPA explicitly ratified and grandfathered the then-existing foreign assets control regulations with respect to Cuban, Vietnamese and other foreign assets, which as we have noted, prohibited judicial attachments or judgments. 50 U.S.C. §1706(a).

Further, since the enactment of the FSIA, the President has entered into Executive agreements settling the claims of United States nationals against foreign governments. These agreements have met with Congressional praise. See Appendix B, at B-20-1. Moreover, Congress has amended the International Claims Settlement Act of 1949, 22 U.S.C. §§ 1621, *et seq.*, as amended (1980), looking forward to an eventual settlement by Executive agreement of claims against Vietnam. See Appendix B, at B-21.

Finally, Congress has acquiesced in the actions of two Presidents in entering into and implementing the Algerian Declarations. Presidents Carter and Reagan both submitted the reports to Congress required pursuant to the IEEPA, 50 U.S.C. § 1703(a)-(c). Congress never questioned the President's declaration of a national emergency, the renewals thereof, or the corresponding exercise of IEEPA powers in blocking, regulating, or licensing property in response to the declared emergency. In addition, Congress held hearings on the Algerian Declarations. *Hearings on the Algerian Declarations Before the Senate Committee on Foreign Relations*, 97th Cong., 1st Sess. (February 17 & 18, 1981) (unpublished); *Hearing Before the Senate Committee on Banking, Housing, and Urban Affairs: Iranian Assets Settlement*, 97th Cong. 1st Sess. (February 19, 1981); *Hearings on the Algerian Declaration Before the House Committee on Foreign Affairs*, 97th Cong., 1st Sess. (February 19, 1981) (unpublished). No resolutions or legislation have been introduced pursuant to 28 U.S.C. § 1706 (b) to change, nullify or interfere with Executive actions requiring the transfer of assets pursuant to IEEPA. See Appendix B at B-23-25.

These actions of Congress simply confirm the obvious. The FSIA has nothing whatever to do with and does not derogate from the Executive's statutory and constitutional power to settle foreign claims in furtherance of overriding foreign and economic policy objectives of the United States.

Petitioner's argument that this court find such a limitation of an historic and settled Executive power within the interstices of the FSIA must be rejected:

> Absent clear and unequivocal evidence of Congressional intent [to limit the Executive] we are unwilling to announce a limitation on the President's powers to conduct the foreign affairs of this country.

Real v. *Simon,* 510 F.2d 556, 560 (5th Cir., 1975). *Cf., Silver* v. *New York Stock Exchange,* 373 U.S. 341, 357 (1963); *Posados* v. *National City Bank,* 296 U.S. 493, 503 (1936).

POINT III

The Question of the Adequacy of the Compensation, if Any, Due to Petitioner Is Not a Basis for Judicial Interference With Implementation of the Executive's Actions.

Although the third question of the petition raises the issue of whether the Executive's actions amount to an unconstitutional taking of property, petitioner chose to make no further mention of it. This is not surprising, since petitioner clearly is not entitled to compensation on the attachment issue, and any claim of taking arising from the claims settlement is at the least premature. Moreover, petitioner must pursue a compensation claim initially in the Court of Claims, which would have exclusive jurisdiction over the matter.

A. *The Executive's Revocation of Petitioner's Conditional License to Attach Iranian Assets Which Previously Had Been Blocked by the Executive Does Not Constitute a Taking.*

Petitioner obtained its attachment after the Executive, acting pursuant to its statutory powers under IEEPA, had exercised control over Iranian assets by blocking and regulating them. Petitioner's attachment was obtained pursuant to a conditional license, which the Executive made clear could be revoked at any time. Petitioner therefore "had no reasonable expectation, that against the factual backdrop of an unresolved international crisis, the President would not revoke what he had granted. . . . Without a reasonable expectation that [its] restraints were protected, the [petitioner] cannot claim any property interests in those restraints. If so, the President took nothing on Jan-

uary 19." *American International Group* v. *Islamic Republic of Iran*, Nos. 80-1779, 1891 (D.C. Cir. June 5, 1981), slip op. at 38; *accord, Charles T. Main International, Inc.* v. *Khuzestan Water & Power Authority*, No. 80-1027 (1st Cir. May 22, 1981) typescript op. at 12-13.

B. *No Determination Presently Can Be Made as to Whether Petitioner Would Suffer a Compensable Loss as a Result of the Claims Settlement Agreement.*

Bank Markazi takes no position on the question of whether petitioner is entitled to compensation from the United States if petitioner should suffer a loss as a result of the implementation of the claims settlement provisions of the Algerian Declarations. We note, however, that whether petitioner will suffer a loss of any kind is dependent on future events and necessarily is speculative. As the District of Columbia Circuit stated in the *American International Group* case:

> We have no reason to believe that the arbitration panel will not render meaningful relief. We have no reason to believe that the $1 billion security fund will not cover all meritorious claims. We have no reason to believe that the Iranians will not replenish the funds as they have agreed to do. We have no reason to believe that if they do not replenish the fund, then the prevailing claimants will be unable to obtain worldwide enforcement of any award according to the terms of the declarations. Finally, and by no means of least importance, we have no assurance that the appellees' claims are meritorious, and thus that executive action has taken anything of value.

Slip op. at 36; *accord, Charles T. Main*, typescript op. at 23-24.

Since petitioner's claim for compensation at this point is wholly speculative, the Court should adopt the course

followed by the District of Columbia and First Circuits and not decide it now.

C. *Even if Petitioner Does Suffer a Loss and Has a Right to Compensation, the Question of the Existence and Adequacy of Petitioner's Remedy Is a Political Question, Which the Political Branches Have Resolved by Establishing Exclusive Jurisdiction Over Petitioner's Claim in the Court of Claims.*

As we emphasized in Point II, the judiciary is bound to give effect to Executive action settling foreign claims. The question of the existence and adequacy of a remedy itself is a political question, wholly apart from the courts' obligation to give full effect to the executive orders.

In *Gray* v. *The United States*, 21 Ct. Cl. 340 (1886), the court addressed the issue of whether an agreement between the United States and France, in which the secured claims of United States nationals against French privateers were cancelled in exchange for France's release of the United States from certain treaty obligations, gave rise to an obligation on the part of the United States government to compensate United States citizens for the loss of their claims. The court went to great pains to underscore that the issue presented was a political question and that it was only because Congress had by statute directly authorized the court to render an advisory opinion that the court had any authority whatever:

> . . . The rights of the claimants, if any exist, arise from the acts of the political branch of the Government done in the protection and aid of the nation. For such rights there can be no remedy other than that granted by the legislature; in this instance the legislature has elected to transmit to the judiciary, under certain restrictions, the examination of the claimants' demands, with the proviso that the conclusion reached in this forum shall not be finally binding

> upon either party, but that the defendants, as well as the claimants, have reserved to them an appeal, not in the regular line of judicial procedure to the Supreme Court of the United States, but back again to that body, from which alone any remedy can come to the citizen for wrongs done him by his Government.
>
> The reason for this peculiar grant of remedy is found in the nature of the claims, which spring from international controversies of the gravest character intimately entwined with the history of our struggle for independence; also in the age of the claims; and, lastly, in the absolutely indeterminate amount of financial responsibility which will be thrown upon the Government should the claims be found to exist as valid obligations due from the United States to their citizens. Good or bad, not one of these claims is enforceable but by the consent of the Congress, and the Congress can affix to that consent such condition as in their wisdom seems just and for the best interests of the Republic. The remedy now granted is an examination and advisory report by the judiciary, to be followed by a decision by the legislative branch of the Government.

21 Ct. C. at 344-345. Here, as in *Gray*, if petitioner's rights have been violated, the remedy must come from the political branches of government.

In fact, the political branches *have* established a remedy for damages against the United States in the Court of Claims under the Fifth Amendment's Just Compensation Clause.[16] The Tucker Act, 28 U.S.C. § 1491, "guarantees an adequate remedy at law for any taking." *Regional Rail Reorganization Act* Cases, 419 U.S. 102, 149 (1974).

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[16] The Court of Claims is an Article III Court. 28 U.S.C. § 171; *Glidden Co.* v. *Zdanok*, 370 U.S. 530 (1962).

The Tucker Act remedy would be available to assure compensation to the petitioner. An action for just compensation would not be precluded by 28 U.S.C. § 1502, because in order to invoke the jurisdictional bar of § 1502, "the right itself, which the petitioner makes to be the foundation of the claim, must have its origin—derive its life and existence—from some treaty stipulation." *United States* v. *Weld,* 127 U.S. 51, 57 (1888).

Here, petitioner's claim, if any, against the United States does not have its origin in the Algerian Declarations or any treaty. To the contrary, like the plaintiffs in *Aris Gloves Inc.* v. *United States,* 420 F.2d 1386 (Ct. Cl. 1970), and *Hughes Aircraft Co.* v. *United States,* 534 F.2d 889 (Ct. Cl. 1976), petitioner can maintain only that the Algerian Declarations, to the extent relevant, deprive it of property interests. Section 1502 does not come into play at all.

CONCLUSION

The petitioner's constitutional challenge must be rejected. The Court is required to give full effect to the Executive's actions implementing the Algerian Declarations.

Dated: June 19, 1981

Respectfully submitted,

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APPENDIX A

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision[1]	Amount of Award or Settlement
November 19, 1794	Great Britain and United States	Treaty of Amity Commerce and Navigation (Jay Treaty) (1 Malloy, Treaties, Conventions, International Acts, Protocols and Agreements Between the United States and Other Powers 590 (1910)) (hereinafter "Malloy")	a) debts owed by American citizens to British subjects; b) claims of U.S. citizens based on illegal seizures of ships and other property by British government; c) claims of British citizens based on actions of U.S. government	Mixed Commission[2]	Yes	See G.B.-U.S., January 8, 1802 (Commission disbanded)
October 17, 1795	Spain and United States	Treaty of Friendship, Boundaries, Commerce and Navigation (2 Malloy 1640)	Maritime captures of U.S. vessels and cargoes by Spanish subjects during war	Mixed Commission	Yes	$325,440.07 to U.S. (Spanish Spoliations)
December 7 and 12, 1799*	Netherlands and United States	Case of the Schooner "Wilmington Packet" (5 Miller, Treaties and Other International Acts of the United States of America 1075 (1937)) (hereinafter "Miller")	Claims based on seizure of ship by Dutch privateer and condemnation of the ship's cargo by Dutch prize tribunal	Lump Sum Settlement	Yes	20,000 florins to U.S.
January 8, 1802	Great Britain and United States	Convention for Payment of Indemnities and Settlement of Debts (1 Malloy 610)	See G.B.-U.S., Jay Treaty November 19, 1794	Lump Sum Settlement and Mixed Commission	Yes	a) Lump sum of $2,664,000 to British citizens; b) By commission: $11,656,000 to U.S., $143,428.14 to G.B.

1 A treaty, executive agreement, or convention is said to have a binding provision if it contains a provision declaring the settlement mechanism specified in the agreement as a final and conclusive determination of the claims at issue.

2 A Mixed Commission consists only of representatives of the parties to the agreement.

* An asterisk is placed next to each executive agreement.

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
August 11, 1802	Spain and United States	Claims Convention (2 Malloy 1650)	Mutual claims based on excesses committed by individuals of both nations during war	Mixed Commission	Yes	No award
April 30, 1803	France and United States	Convention for Payment of Sums Due by France to Citizens of the United States (1 Malloy 513)	Claims for debts owed U.S. citizens by French government for supplies, and claims based on seizures of ships and good by France	U.S. Commission	No	Approx. 20,000,000 French francs to U.S.
October 20, 1818	Great Britain and United States	Convention Respecting Fisheries, Boundary and the Restoration of Slaves (1 Malloy 631)	Claims for slaves of U.S. citizens taken by British troops during war (based on Treaty of Ghent of 1814)	Third Party Arbitration[3] (later referred to Emperor of Russia)	Yes	See G.B.-U.S., Nov. 13, 1826
February 22, 1819	Spain and United States	Treaty of Amity, Settlement and Limits (2 Malloy 1651)	Florida ceded to U.S.; Mutual claims for damages or injuries suffered up to date of treaty renounced by both governments; U.S. govt. agrees to pay claims of U.S. citizens up to $5,000,000	U.S. Commission	Yes	$5,454,545.13 of claims awarded pro-rata from $5,000,000 fund
July 12, 1822	Great Britain and United States	Convention for Indemnity Under Award of Emperor of Russia as to the True Construction of First Article of the Treaty of December 24, 1814 (1 Malloy 634)	Claims for slaves (see G.B.-U.S., October 20, 1818).	Mixed Commission	Yes	See G.B.-U.S., Nov. 13, 1826

3 Third Party Arbitration involves the resolution of a claim by some entity consisting of no representatives of the parties to the agreement.

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
March 16, 1825*	United States and Colombia	Convention for Adjusting Certain Claims (3 Miller 195)	a) claim for cargo, loss of profit, injuries and damages of owners of Schooner Liberty; b) claims for vessel, cargo, loss of profit injuries and damages of owners of the Brig Josephine and Schooner Minerva respectively; c) claim for forfeited cargo to owner of cargo of Brig America	Lump Sum Settlement	(Colombia reserved right of action against individuals whose actions may have caused the settled claims)	$72,653.40 (plus interest) to U.S.
April 19 and 22, 1825*	United States and Russia	Exchange of Notes for the Settlement of the Claim in the case of the Brig "Pearl" (3 Miller 201)	Claim for cargo bound for Northwest coast which was left at Sandwich Islands after Russia representatives ordered American Brig Pearl to leave the area	Lump Sum Settlement	Yes	$16,994.69 to U.S.
November 13, 1826	Great Britain and United States	Convention Relative to Indemnity for Slaves (1 Malloy 641)	Claims for slaves (see G.B.-U.S. October 20, 1818)	Lump Sum Settlement	Yes	$1,204,960 to U.S.
March 17, 1828*	United States and Russia	Settlement of the Claims for the Brig "Hector" and the ship "Commerce" (3 Miller 421)	a) claim of owner of Brig "Hector" for cost of cargo, value of brig, lost profits; b) claim of owner of ship "Commerce" for the ship, freight and damage arising from capture of "Hector" and "Commerce" by vessels under the Russian flag	Lump Sum Settlement	Yes	205,731 rubles to U.S.

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
June 15, 1829*	United States and Brazil	Settlement of Claims (3 Miller 485)	13 claims of owners and shippers for losses and damages suffered by the American ships Sarah George, Rio, Ruth, Hero, Panther Nile, Amity, Hussan, Pioneer, Spermo, Telltale, Hannah and Budget which were seized by Brazilian authorities	Confirmation of 13 claims agreements entered into by Mixed Commission	Yes	Total settlement of all 13 claims from the separate claims agreements Rs. 427,259,546 ($242,845.05) to U.S.
November 25, 1829*	United States and Colombia	Convention for Adjusting Certain Claims (3 Miller 523)	a) claims of owners of Brig "Josephine", owners of Schooner "Ranger" and their cargo for lost profit, injuries and damages resulting from seizure of ships by Colombian authorities	Lump Sum Settlement	Reserved right of owners of Brig Josephine to claim any additional interest to which they were entitled	$20,250.00 to U.S. for "Josephine" $5,013.59 to U.S. for "Ranger"
March 28, 1830	Denmark and United States	Claims Convention (1 Malloy 377)	Mutual claims for detention or confiscation of ships and other property under the authority of either government	Lump Sum Settlement	Yes	$650,000 Spanish milled dollars to U.S. (3 person U.S. Bd. of Commissioners to distribute)

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
July 4, 1831	France and United States	Convention as to Claims and Duties on Wines and Cotton (1 Malloy 523)	Mutual claims for detention or confiscation of ships and other property by either government	Lump Sum Settlement	Yes	25,000,000 francs to U.S.; 1,500,000 francs to France (distributed by each country to its own citizens)
January 19, 1832*	United States and Portugal	Settlement of Claims (3 Miller 653)	Claims for a) the capture of 4 U.S. ships by the squadron of Portugal - the "Ann", the "Galatea", the "Gleaner", the "Planter"; b) the clothing, and arrest and treatment of the crew of the "Galatea"	Lump Sum Settlement		"Ann" -$33,744.42 "Galatea"-$38,063.85 "Gleaner"-$7,250.00 "Planter"-$29,418.90 Clothing-$1,260.20 Arrest and treatment-$750.00 Total - $110,487.37 to U.S.
October 14, 1832	Two Sicilies (Italy) and United States	Claims Convention (2 Malloy 1804)	Claims for detention or confiscation of ships and other property from 1809-1812	Lump Sum Settlement	Yes	2,115,000 ducats to U.S. (distributed by U.S.)
February 17, 1834	Spain and United States	Claims Convention (2 Malloy 1659)	Adjustment of mutual claims from February 22, 1819 - date of this treaty	Lump Sum Settlement	Yes	12,000,000 rials vellon ($549,850.28 distributed by U.S.)
April 11, 1838	Texas (Republic) and United States	Claims Convention (2 Malloy 1779)	Claims based on seizure of ships and personal injuries by officers of govt. of Texas	Lump Sum Settlement	Yes	$11,750 to U.S. (distrib. by U.S.)

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
March 25, 1839*	United States and Netherlands	Settlement of the Claim for the Ship "Mary" and Her Cargo (4 Miller 179)	Claim for vessel and cargo captured by French privateer, taken to Curacao and sold there	Lump Sum Settlement	All future claims to be referred to U.S.	$62,692.00 to U.S.
April 11, 1839	Mexico and United States	Claims Convention (2 Malloy 1101)	Claims based on injuries to property and persons by Mexican authorities which had been presented to State Dept. or U.S. Ambassador to Mexico by the date of this convention	Mixed Commission with disputes to King to Prussia	Yes	See Mexico-U.S., Feb. 2, 1848
July 7, 1840*	United States and Chile	Agreement for the Settlement of the First Case of the Brig "Macedonian" (4 Miller 287)	Claim for seizures of money totalling $140,000 by Chilean soldiers	Lump Sum Settlement		$104,000 to U.S.
December 10, 1840*	United States and Chile	Agreement for the Settlement of the Case of the Brig "Warrior" (4 Miller 325)	Claim for seizure and detention of Brig "Warrior" by Chilean military	Lump Sum Settlement		$15,000 to U.S.
March 17, 1841	Peru and United States	Claims Convention (2 Malloy 1386)	Claims for detention, damage, or confiscation of ships and other property by order of govt. of Peru or unders its authority	Lump Sum Settlement	Yes	$421,432.41 to U.S. citizens (after adjudication by Attorney General)
October 15, 1842*	Brazil and United States	Seizure of "John S. Bryan" (5 Moore, International Arbitrations Digest (1898), 4613)	Claims for damages for seizure and detention of ship	Mixed Commission	No	$3,292.07 to U.S.

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
January 30, 1843	Mexico and United States	Claims Convention (1 Malloy 1105)	See Mexico-U.S., April 11, 1839, and claims presented by date of this new convention	Mixed Commission	N/A	See Mexico-U.S., Feb. 2, 1848
February 9, 1843*	United States and New Granada	Convention for the Settlement of Claims Arising Out of the Confiscation of Part of the Cargo of the Schooner "By Chance" (4 Miller 499)	Claim for confiscation of part of cargo belonging to U.S. citizens by New Granadian government	Lump Sum Settlement	Yes	$10,150 to U.S.
February 26 and 29 and March 1, 1844*	Venezuela and United States	Arrangement for the Settlement of the Case of the Brig "Morris" (4 Miller 523)	Claim for vessel Brig "Morris" and its cargo which were seized by Colombian privateer and subsequently sold	Lump Sum Settlement		$18,000 to U.S.
April 22, 1844*	New Granada and United States	Convention for the Settlement of the Claim Arising out of the Loss of Part of the Cargo of the Schooner "Henrietta" (4 Miller 555)	Claims for certain cargo, owned by U.S. citizen, on the Granadian Schooner "Henrietta" which was captured in Granadian civil war	Lump Sum Settlement	Yes	$1,243 to U.S.
November 5, 1844*	New Granada and United States	Convention for the Settlement of the Case of the Brig "Morris" (4 Miller 663)	Claim for Brig "Morris" and its cargo which were seized by Colombian privateer and subsequently sold	Lump Sum Settlement	Yes	$12,756.47 1/2 to U.S.
March 29, 1845*	New Granada and United States	Convention for the Settlement of Claims Arising out of the Seizure of the Schooner "Yankee" (4 Miller 741)	Claims for imprisonment and wages of crew of the schooner "Yankee", its cargo and freight charges	Mixed Commission	Yes	$10,891.00 to U.S.

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
November 10 and 26, 1845*	Great Britain and United States	Settlement of Claims (4 Miller 779)	Claims for excess duties levied by United States over British goods and claims for excess duties levied by Great Britain over United States goods	N/A	Yes	Each government pays claims of its own citizens
May 16, 1846*	New Granada and United States	Convention for the Final Settlement of the Case of the Brig "Josephine" (4 Miller 813)	Claims for nonpayment of certain interest suffered by those interested in the American Brig "Josephine"	Lump Sum Settlement	Yes	$6,569.14 to United States
November 16, 1846*	Venezuela and United States	Seizure of Brigs "Native" and "Josephine" (12 Bevans, Treaties and Other International Agreements of the United States of America 1776-1949 (1974), at 1052) (hereinafter "Bevans")	Claims based on seizure of cargo and ship by Venezuela	Lump Sum Settlements	Yes	$9,550 to U.S. for "Native"; $5,453 to U.S. for "Josephine"
February 2, 1848	Mexico and United States	Treaty of Guadalupe Hidalgo (1 Malloy 1107)	U.S. agrees to pay all claims of U.S. citizens against Mexico and discharges Mexico's obligations to U.S. citizens	U.S. Board of Commissioners	Yes	U.S. pays $3,208,314.96 to U.S. claimants
April 12, 1848*	Venezuela and United States	Convention upon the Claim Relative to the American Brig "Sarah Wilson" (12 Bevans 1056)	Claim based on detention and sale of ship and cargo by Venezuela	Lump Sum Settlement	Yes	$30,200 to U.S.
April 25, 1848*	New Granada and United States	Convention for the Settlement of the Case of the Brig "Native" (5 Miller at 437)	Claims arising out of the seizure of the Brig "Native" and its cargo by a Colombian vessel of war	Lump Sum Settlement	Yes	$16,000 to United States

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
January 27, 1849	Brazil and United States	Claims Convention (1 Malloy 144)	Claims of U.S. citizens	Lump Sum Settlement	Yes	530,000 milreis to U.S. (distributed by U.S.)
June 15, 1849*	Ecuador and United States	Settlement of Cases of Brig "Josephine" and Schooner "Ranger" (7 Bevans 308)	Claims for damages for seizure and detention of ship	Lump Sum Settlement	No Provision	$5,953 to U.S. for "Josephine"; $1,099 to U.S. for "Ranger"
July 7, 1849*	Venezuela and United States	Convention Upon the Claim Relative to the American Brig "Mount Vernon" (12 Bevans 1058)	Claim based on seizure and detention of ship and loss of cargo	Lump Sum Settlement	Yes	$11,500 to U.S.
February 9, 1850*	Ecuador and United States	Settlement of Case of Brig "Morris" (7 Bevans 310)	Claims based on capture and sale of ship by Colombian authorities	Lump Sum Settlement	Yes	$14,016 to U.S.
February 26, 1851	Portugal and United States	Claims Convention (2 Malloy 1458)	Pecuniary claims of U.S. citizens against govt. of Portugal; govt. claim for "Brig Armstrong"	Lump Sum Settlement (private claims); Third Party Arbitration by Pres. of France on Govt. claim	Yes	$91,727 to U.S.; no award on "Brig Armstrong" claim
May 1, 1852*	Venezuela and United States	Claims convention Relative to Schooner "Economy" and Others (12 Bevans 1060)	Claims based on confiscations of ships and cargoes	Lump Sum Settlement	Yes	$90,000 to U.S.

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
August 6, 1852*	Peru and United States	Agreement on Case of Samuel Franklin Tracy (10 Bevans 1017)	Claims based on losses sustained by Tracy for illegal arrest and for actions taken by govt. of Peru against his property	Lump Sum Settlement	Yes	$26,560 to U.S.
February 5, 1853*	Ecuador and United States	Settlement of Case of Brig "Native" (7 Bevans 312)	Claims based on seizure of ship by Colombian authorities	Lump Sum Settlement	Yes	$7,204 to U.S.
February 8, 1853	Great Britain and United States	Claims Convention (1 Malloy 664)	Mutual claims since The Treaty of Ghent 1814	Mixed Commission	Yes	$329,734.16 to U.S. $277,102.88 to G.B.
September 10, 1857	New Granada (Colombia) and United States	Claims Convention (1 Malloy 319)	General claims presented before Sept. 1, 1859 to the government of New Granada and claims for damages based on Panama riots of April 15, 1856	Mixed Commission	Yes	$496,235.47 to U.S.
November 8, 1858	China and United States	Claims Convention (1 Malloy 232)	General claims of U.S. citizens at ports of China	Lump Sum Settlement	Yes	$735,238.97 to U.S. (distrib. by U.S. of $489,187.95, surplus returned)
November 10, 1858	Chile and United States	Convention for Arbitration of Macedonian Claims (1 Malloy 183)	Claims based on seizure of silver from U.S. citizen by Chilean Admiral Cochran	Third Party Arbitration by King of Belgium	Yes	$42,400 to U.S.

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
January 14, 1859	Venezuela and United States	Claims Convention (2 Malloy 1843)	Claims of U.S. citizens for damages caused by their eviction from Aves Island	Lump Sum Settlement	Yes	$130,000 to U.S.
February 4, 1859	Paraguay and United States	Claims Convention (2 Malloy 1362)	Claim of "United States and Paraguay Navigation Company" (U.S. company) that its property was damaged by actions of Paraguay's govt.	Mixed Commission	Yes	No award
July 2, 1860	Costa Rica and United States	Claims Convention (1 Malloy 346)	Claims for property damage and personal injuries caused by authorities of Costa Rica	Mixed Commission (disputes on choice of 3rd commissioner to King of Belgium)	Yes	$25,704.14 to U.S.
November 25, 1862	Ecuador and United States	Claims Convention (1 Malloy 432)	Mutual pecuniary claims upon each government	Mixed Commission (disputes on choice of umpire to British Minister)	Yes	$94,799.56 to U.S.
December 20, 1862	Peru and United States	Claims Convention (2 Malloy 1406)	Claims based on seizure and confiscation of ships "Lizzie Thompson" and "Georgiana" by govt. govt. of Peru	Third Party Arbitration by King of Belgium	Yes	No award
January 12, 1863	Peru and United States	Claims Convention (2 Malloy 1408)	Mutual pecuniary claims against each government	Mixed Commission	Yes	$57,196.23 to U.S.; $25,300 to Peru
July 1, 1863	Great Britain and United States	Treaty for Settlement of Claims with the Hudson Bay Co. (1 Malloy 688)	Claims of British companies for compensation for land given to U.S. under G.B.-U.S. Treaty of June 15, 1846	Mixed Commission	Yes	$650,000 to British companies

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
February 10, 1864	Colombia and United States	Claims Convention (1 Malloy 321)	Claims based on Panama riots	Mixed Commission	Yes	$88,267.88 to U.S.
May 4, 1864*	Salvador and United States	Government Monopoly, Arbitration of Claim of Mr. Savage. (2 Moore 1855)	Personal claim for gunpowder that was nationalized	Third Party Arbitration by Guatemala	N/A	$4,497.50 to U.S. (to Savage)
April 25, 1866	United States and Venezuela	Claims by Citizens of the United States against the Government of Venezuela (2 Malloy 1856)	Pecuniary claims of U.S. citizens	Mixed Commission (disputes on choice of umpire to Russia or Switz.)	Yes	$1,253,310.30 to U.S.
July 4, 1868	Mexico and United States	Claims Convention (2 Malloy 1128)	Mutual pecuniary claims for injuries to persons and property by authorities of either country since Treaty of Guadalupe Hidalgo in 1848	Mixed Commission	Yes	$4,125,622.20 to U.S.; $150,498.41 to citizens of Mexico
December 4, 1868	Peru and United States	Claims Convention (2 Malloy 1411)	Mutual pecuniary claims since 1863 Commission	Mixed Commission (Disputes to 3rd Nation)	Yes	$194,417.62 to U.S.; $57,040 to Peru
March 14, 1870*	Brazil and United States	Protocol for Submission to Arbitration of Claim Over the "Canada" (5 Moore 4687)	Claim based on seizure of ship and sale of cargo by Brazil	Third Party Arbitration by British Ambassador	Yes	21,150 pounds to U.S.
May 25-June 16, 1870*	Spain and United States	Detention of Ship, "Colonel Lloyd Aspinwall" (2 Moore 1007)	Claim based on detention of ship	Mixed Commission	No	$19,702.50 to U.S.

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
February 12, 1871*	Spain and United States	Agreement for Settlement of Certain Claims of Citizens of U.S. on Account of Wrongs and Injuries Committed by Authorities of Spain in the Island of Cuba (2 Malloy 1661)	Claims arising out of Cuban insurrection for damages to property and injuries to persons by authorities of Spain	Mixed Commission	Yes	$1,293,450.55 to U.S.
May 8, 1871	Great Britain and United States	Treaty of Washington (1 Malloy 700)	"Alabama" claims based on British failure to maintain neutrality in Civil War and mutual pecuniary claims after Civil War	Joint Commission[4]	Yes	$1,929,819 to Great Britain; $15,500,000 to U.S.
December 6, 1873*	Chile and United States	Protocol for Submission to Arbitration of Claim for the Ship "Good Return" (2 Moore 1466)	Claims based on seizure of ship	Third Party Arbitration by Italian Consul in Chile, then lump sum settlement	No Provision	$18,229.16 to U.S.
August 17, 1874*	Colombia and United States	Seizure and Detention of Ship "Montijo" (5 Moore 4698)	Claims based on seizure and detention of ship	Mixed Commission	Yes	$33,401 to U.S.
February 27, 1875*	Spain and United States	Agreement-The Steamer Virginius (2 Malloy 1664)	Claims based on seizure of ship	Lump Sum Settlement	Yes	$80,000 (to be distributed by U.S. government)
January 15, 1880	France and United States	Claims Convention (1 Malloy 535)	Mutual pecuniary claims based on actions of either country during a) Franco-German War of 1870-71, b) the "Insurrection of the Commune", c) the France-Mexico War	Joint Commission	Yes	$625,566.35 to France, 13,659 francs to U.S.

4 A Joint Commission consists of representatives of the parties to an agreement and a representative of at least one other nation.

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
May 28, 1881*	Great Britain and United States	Claims of American Fisherman (1881 For. Rel. 591)	Claims based on disturbance of Amer. fishing operations by British subjects in Newfoundland	Lump Sum Setttlement	Yes	$15,000 to U.S.
1884 (award May 24, 1884)	China and United States	Ashmore Fishery Claim (2 Moore 1857)	Claim for compensation for giving up title to fishery ground	Third Party Arbitration by Ambassadors from G.B. and Netherlands	No Provision	$4,600 to U.S. (to Ashmore)
May 28, 1884*	Haiti and United States	Protocol of an Agreement for Submission to an Arbitration of the Claims of Pelletier and Lazare against Haiti (1 Malloy 932)	Claims for illegal arrest, seizure of properties, and breach of contract by Haitian authorities	U.S. Arbitrator	Yes	$57,250 to Pelletier, $117,500 to Lazare (both set aside by U.S. Sec. of State)
November 17-25, 1884*	Spain and United States	Detention and Sale of Ship "Masonic" (2 Moore 1055)	Claims based on detention and sale of ship	Third Party Arbitration	No Provision	$51,674.07 to U.S.
January 25, 1885*	Haiti and United States	Civil Disturbances (2 Moore 1859)	Claims against Haiti for property damage and personal injury after riots	Mixed Commission	No Provision	$14,700 to U.S.

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
December 5, 1885	United States and Venezuela	Claims Convention (2 Malloy 1858)	Pecuniary claims of U.S. citizens	Mixed Commission disputes over choice of 3rd Comm. to Russia or Switz.	Yes	$980,572.60
December 5, 1885 and October 5, 1888	Venezuela and United States	Review Commission (2 Malloy 1858 and 1866)	Pecuniary claims of U.S. citizens	Extension of prior commission	Yes	See U.S.-Venezuela Dec. 5, 1885
November 29, 1886 and December 7, 1886	Spain and United States	Claim of Antonio Maximo Mora (Moore, Treaties and Executive Agreements, 1905 Political Science Quarterly 385)	Claim of individual based on embargo of his property in Cuba	Lump Sum Settlement		$1,500,000 to U.S.
April 9, 1888	Morocco and United States	Illegal Arrest (Darby, International Tribunals 505 (3rd ed. 1900)) (hereinafter "Darby")	Claim based on arrest of American consul by Moorish authorities	Mixed Commission		
May 24, 1888*	Haiti and United States	Protocol of an Agreement for Submission to an Arbitrator of the claim of Charles Adrien Van Bokkelen (2 Moore 1813; 1 Malloy 935)	Claim based on arrest and imprisonment	Referee	Yes	$60,000 to U.S.
December 6, 1888	Denmark and United States	Agreement Submitting Claim of Carlos Butterfield & Co. to Arbitration (1 Malloy 387)	Seizure and detention of ships "Ben Franklin" and "Barque Catherine Augusta" by the authorities of the island of St. Thomas of the Danish West Indies	Third Party Arbitration by British Ambassador in Greece	Yes	No Award
August 13, 1890	Great Britain and United States and Portugal	Railway Concession (Darby 506)	British and U.S. claims based on rescission of railway concession and seizure of the railroad by Portuguese govt.	Third Party Arbitration by Swiss Confederation		28,000 pounds (on account) to U.S. and G.B.

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
June 13, 1891*	United States and Great Britain vs. Portugal	Protocol Between the United States, Great Britain, and Portugal in Reference to Arbitration of Claims Against Portugal (2 Malloy 1460)	British and U.S. claims based on rescission of railway concession by Portugal	Third Party Arbitration by Swiss confederation	Yes	15,314,000 Swiss francs to G.B. and U.S.
January 19, 1892	United States and Venezuela	Claims Convention - Venezuelan Steam Transportation Company (2 Malloy 1868)	Claims based on seizure of ships and other property, and imprisonment of U.S. citizens	Mixed Commission (with 3rd Nation)	No	$141,800 to U.S.; $300 to Venezuela
August 7, 1892, May 24, 1897	Chile and United States	Claims Convention (1 Malloy 185)	Mutual pecuniary claims based on acts of civil or military authorities of either country	Mixed Commission	Yes	$240,564 to U.S.
February 28, 1893	Ecuador and United States	Claims Convention - Julio R. Santos (1 Malloy 438)	Claim of individual based on wrongful imprisonment and injuries to person and property by authorities of Ecuador	Third Party Arbitration by British Ambassador in Ecuador	Yes	$40,000 to U.S.
March 2, 1897*	Mexico and United States	Protocol Concerning Claims of Oberlander and Messenger (2 Malloy 1180)	Claims based on personal injuries to Oberlander and Messenger by Mexican citizens	Third Party Arbitration by Minister of Argentina at Madrid	Yes	No award
May 24, 1897*	Chile and United States	Claims Protocol (1 Malloy 190)	Claim of Patrick Shields for personal damages	Lump Sum Settlement of individual claim	Yes	$3,500 to U.S.

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
June 14, 1897	Ecuador and United States	Guayaquil and Quito Railway Co.	Claims of U.S. citizens based on spoliation of property and property rights by virtue of taking by Ecuador of the railway	Mixed Commission	No Provision	
July 26, 1897*	Siam and United States	Protocol Concerning Claim of Cheek (Darby 514)	Claim of Cheek based on seizure of property and interference with his teak concession; claim of Siam based on breach of loan agreement	Third Party Arbitration by Chief Justice of G.B.'s Sup. Ct. for China and Japan	Yes	706,721 tieals to U.S. ($200,000)
September 20, 1897 (date of award)	Siam and United States	Military Assault (Darby 514)	Claim based on attack by Siamese soldiers on Mr. E.V. Kellet	Mixed Commission		In favor of U.S.
February 1898*	Dominican Republic and United States	Ozama River Bridge (7 Bevans 183)	Claim based on interference by Dominican Rep. govt. with concession to build and operate a bridge	Mixed Commission	No Provision	$74,411.17 to U.S.
May 17, 1898*	Peru and United States	Protocol of an Agreement for the Arbitration of the Amount of Damages to be Awarded in Favor of Victor H. MacCord (2 Malloy 1443)	Claim for personal injuries caused by Peruvian authorities	Third Party Arbitration by Chief Justice of Canada	Yes	$40,000 to U.S.
December 10, 1898	Spain and United States	Treaty of Peace (2 Malloy 1690)	Mutual claims arising out of insurrection in Cuba - Spain and U.S. mutually relinquish all claims of their citizens against each other	N/A	Yes	U.S. to pay all claims of its citizens

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
October 18, 1899 and June 30, 1900*	Haiti and United States	Protocol of an Agreement Between the United States and Haiti, For The Arbitration of the Question of the Liability and Amount of Damages to be Awarded John D. Metzger and Company (8 Bevans 646)	Claims for seizure and sale of goods, and for breach of contract for sale of lumber by Haitian govt.	U.S. Arbitrator	Yes	$23,000 to U.S.
November 7, 1899	Germany, Great Britain, and United States	Convention Between United States, Germany and Great Britain Relating to Settlement of Samoan Claims (2 Malloy 1589)	Personal claims based on military action of the three nations in the Samoan Island	Third Party Arbitration by King of Norway and Sweden	No	U.S. and G.B. responsible for losses
February 23, 1900 and May 10, 1900*	Guatemala and United States	Protocol of an Agreement Submitting to Arbitration The Claim of Robert H. May Against Guatemala and the Claim of Guatemala Against Said May (1 Malloy 871 and 873)	Mutual claims based on contracts in connection with the Guatemala Northern Railroad (claim of May was against Guatemalan govt.)	Third Party Arbitration by British Consul to Guatemala	Yes	$143,750.73 to U.S.
March 22, 1900*	Nicaragua and United States	Protocol of an Agreement for the Arbitration of the Amount of Damages to be Awarded Orr and Laubenheimer and the Post-Glover Electric Company (2 Malloy 1290)	Claims based on seizures of property by Nicaragua, including ships "Buena Ventura" and "Alerta" and other goods	Third Party Arbitration	Yes	$6,963 to Orr, $1,402.94 to Company

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
September 8, 1900*	Russia and United States	Claims Protocol (2 Malloy 1532)	Claims based on seizure of ships "James Hamilton Lewis", "C.H. White", "Kate and Anna", "Cape Horn Pigeon"	Third Party Arbitration by Mr. Asser of the Netherlands	No	$38,650 to "Pigeon", $28,588 to "Lewis", $32,444 to "White", $1,448 to "Kate"
September 7, 1901*	United States and China	Boxer Claims (1 Bevans 302)	Claims for damages to property and persons (protocol covered claims of Germany, Austria-Hungary, Belgium, Spain, France, G.B., Italy, Japan, Netherlands, Russia, and United States)	U.S. Commission (for American claimants)	No Provision	Total of 450,000,000 taels to all powers (some to U.S. claimants)
December 19, 1901*	Salvador and United States	Protocol for the Arbitration of Certain Claims Against Salvador (2 Malloy 1568)	Claims of Salvador Commercial Co. and other U.S. citizens for damages	Joint Commission	Yes	$537,178.64 to claimants
February, 1902*	Salvador and United States	Claim of Rosa Gelbtrunk (1902 Foreign Relations of the United States 873)	Claim of Rosa Gelbtrunk	Joint Commission	No Provision	No award
April 28, 1902*	Dominican Republic and United States	Arbitration of Sala Claim (7 Bevans 184)	Claim of Madam de Sala as surviving partner of J. Sala & Co. for debts owed by Dominican Government	Mixed Commission	No Provision	$215,812.95

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
May 22, 1902*	Mexico and United States	Protocol for the Adjustment of Certain Contentions Arising Under What is Known as the "Pious Fund of the Californias" (2 Malloy 1194)	Claim for interest upon an annual fund	Mixed Commission and umpire from the Hague	Yes	$1,420,682.67 lump sum and $43,050.99/year to U.S.
September 6, 1902*	United States and Brazil	Protocol Submitting to Arbitration the Claim of George C. Benner et al. (1 Malloy 152)	Claim based on damage to vessel "James A. Simpson" from shooting by Brazilian soldiers	Third Party Arbitration by Swedish Envoy to U.S.	Yes	No award
January 31, 1903*	Dominican Republic and United States	Arbitration Protocol - Claim of San Domingo Improvement Co. (1 Malloy 414)	Claim for damages for withdrawal of Co. from Dominican Republic; indemnity for relinquishment of rights, properties, and interests	Lump sum settlement and Arbitration of Terms	Yes	$4,500,000 to U.S., relinquishment by Co. of all rights, properties & interest
February 17, 1903*	United States and Venezuela	Protocol with Venezuela Submitting to Arbitration Claims Against Venezuela (2 Malloy 1870)	Claims of U.S. citizens	Mixed Commission (umpire named by Queen of Netherlands)	Yes	$2,313,711.37
May 7, 1903*	Venezuela and Great Britain, United States, et al.	Protocols of Agreements Respecting the Reference of the Question of the Preferential Treatment of Claims to the Tribunal at the Hague (2 Malloy 1872)	Order of preference between nations (choice between Blockading Powers and Creditor Powers)	Arbitration by Tribunal at the Hague (chosen by Emperor of Russia)	Yes	Germany, G.B. and Italy get preference from 30% of Venezuelan customs revenues
November 25, 1904*	Honduras and United States	Cases of Charles W. Renton and Jacob Baiz (8 Bevans 888)	Claims of U.S. citizens	Lump Sum Settlement	Yes	120,000 pesos to U.S.

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
February 13, 1909*	Venezuela and United States	Claims Protocol (2 Malloy 1881)	Claims of U.S. companies (Orinoco Steamship Co., Orinoco Corporation, and United States and Venezuela Company) based on contracts for mining in Venezuela	3 Arbitrators from Permanent Court of Arbitration at the Hague	Private Settlement Allowed	$475,000 to U.S. and Venezuela Company; $385,000 to Orinoco Company
May 25 and September 18, 1909*	Nicaragua and United States	Protocol for Arbitration of the Claim of the George D. Emery Company (10 Bevans 365)	Claim for damages based on annulment of timber concession by govt. of Nicaragua	Mixed Commission (disputes over choice of 3rd comm. to King of G.B.); then Lump Sum Settlement	Yes	$600,000 to U.S.
December 1, 1909*	United States and Chile	Protocol for Arbitraton of the Alsop Claim (6 Bevans 548)	Claim of Alsop & Co. for property losses	Third Party Arbitration by King of G.B.	Yes	2,275,375 bolivanos to U.S.
August 18, 1910	Great Britain and United States	Special Agreement for the Submission to Arbitration of Pecuniary Claims (3 Malloy 2619)	Mutual pecuniary claims based on denials of property rights, alleged wrongful collection of customs duties and other charges, and damages to property or persons by the military of either nation	Mixed Commission (disputes over choice of Umpire to the Hague)	Yes	
January 28, 1911*	China and United States	Agreement in Settlement of Changsha Indemnity Claims (3 Malloy 2512)	Claims of U.S. citizens after disturbances in Hunan province led to property damage	Specified Individual Settlements	Yes	$74,392.53 (or 53,934.58 Hankow taels)

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
April 4, 1911	Nicaragua and United States	Claims Commission (U.S. For. Rel. 1911-631; 10 Bevans 374)	Claims for damages based on abolition of monopolies, concessions, and leases by Nicaragua	Mixed Commission	No Provision	3 awards to Nicaragua, rest to U.S.
November 27, 1915*	Panama and United States	Protocol Providing for the Determination of the Amount of Damages Caused by the Riot at Panama City, July 4, 1912 (3 Malloy 2778)	Claims for deaths and injuries due to riot, Panama concedes liability, issue as to damages	Third Party Arbitration by Netherlands	Yes	$12,500 to U.S.
October 3, 1919*	Haiti and United States	Protocol for the Establishment of a Claims Commission (3 Malloy 2678)	Pecuniary claims of U.S. citizens and subjects	Joint Commission	No	Payable out of $40,000,000 national loan
May 21, 1921*	Peru and United States	Protocol for the Arbitration of the Landreau Claim Against Peru (3 Malloy 2797)	Claims for rewards owed for discovery of guano deposits and for breach of contract by govt. of Peru	Joint Commission	Yes	$125,000 to U.S.
August 10, 1922*	Germany and United States	Agreement for a Mixed Commission to Determine the Amount to be Paid by Germany in Satisfaction of Germany's Financial Obligations under the Treaty Concluded Between the Two Governments on August 25, 1921 (3 Malloy 2601)	Claims based on treaty of peace for damage to or loss of property, and debts	Mixed Commission	Yes	More than $265,939,068.37 to U.S.
September 8, 1923	Mexico and United States	General Claims Convention (U.S. Treaty Series, 678; 4 Malloy 4441)	Mutual pecuniary claims for losses or damages to persons or property since July 4, 1868	Mixed Commission (disputes over choice of 3d commissioner to the Hague)	Yes	

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
September 10, 1923	Mexico and United States	Special Claims Convention for the Settlement of Claims of American Citizens Arising from Revolutionary Acts in Mexico from November 20, 1910 to May 31, 1920 (U.S. Treaty Series, 676; 4 Malloy 4445)	Claims for losses or damages to persons or property arising out of the revolution in Mexico	Mixed Commission (disputes over choice of 3d commissioner to the Hague)	Yes	See U.S.-Mex. April 24, 1934
December 24, 1923*	Turkey and United States	American Claims (H.R. Doc. No. 283, 73d Cong., 2 Sess. p. 3; 11 Bevans 1105)	Mutual pecuniary claims of nationals of both countries	Mixed Commission	No Provision	$1,300,000 to U.S.
November 26, 1924*	Austria-Hungary and United States	Agreement Concerning Obligations (U.S. Treaty Series, 730; 4 Malloy 3928)	Claims of U.S. nationals for damage or seizure of property, death or injury of persons, and debts	Third Party Arbitration	Yes	$370,032.14 to U.S. from Austria; $443,588.79 to U.S. from Hungary
July 28, 1926	Panama and United States	Convention on Claims (4 Malloy 4546; U.S. Treaty Series No. 842)	Mutual pecuniary claims based on losses or damages to persons or property since Nov. 3, 1903; Claims for losses of U.S. citizens due to fire in city of Colon on March 31, 1885	Mixed Commission; Joint Commission (with Colombia for Colon fire)	Yes	
January 2, 1927	Cuba and United States	Attempted Expropriation of Property	Claims of Smith for land seizure	U.S. Arbitrator	No Provision	$190,000 to U.S.
May 19, 1927*	Great Britain and United States	Arrangement for the Disposal of Certain Pecuniary Claims Arising Out of the Recent War (Detention of the S.S. "Lisman", Capture of U.S.S.S. "Edna", Capture of U.S.S.S. "Seguranca") (4 Malloy 4256)	Mutual agreement not to present claims of nationals, and to use funds saved to pay such claims of a country's own nationals	N/A	N/A	

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
March 30, 1928*	China and United States	American Claims for Acts of Chinese Soldiers (MSS Dept. of State)	Claims based on damages to persons and property by Chinese soldiers	Mixed Commission		$443,588.79 to U.S.
June 20, 1929*	Spain and United States	Outstanding Claims (Executive Agreement Series #18; 11 Bevans 687)	Mutual claims	Mixed Commission	No Provision	
October 1, 1929*	Cuba and United States	Indemnity for Damages (49 Arbitration Series #1, MSS Dept. of State)	Claim of Charles Harrah for wrongful destruction of his property by Cuban authorities	Mixed Commission		$350,000 to U.S.
November 22, 1929*	Guatemala and United States	Case of P. W. Shufeldt (8 Bevans 507)	Claim of breach of contract for illegal cancellation of concession for extraction and exportation of chicle against the govt. of Guatemala	Third Party Arbitration by Chief Justice of Sup. Ct. of British Honduras	No Provision	$225,468.38 to U.S.
January 20, 1931*	Egypt and United States	Damages Resulting from Acts of the Egyptian Authorities against George J. Salem (Executive Agreement Series #33)	Claim of Salem for mistreatment by Egyptian authorities and courts	Mixed Commission		No award
November 16, 1933*	U.S.S.R and United States	Litvinov Assignment (11 Bevans 1257)	U.S. gives up claims based on Soviet nationalizations of property of U.S. nationals; U.S.S.R. assigns to U.S. amounts that may be due from U.S. nationals to U.S.S.R.	N/A	N/A	N/A

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
April 24, 1934	Mexico and United States	Convention Providing for En Bloc Settlement of Special Claims (5 Malloy 4487)	General claims of U.S. nationals from Special Claims Convention of Sept. 10, 1923	Lump Sum Settlement	Yes	Based on percentage Mexico recovered from other nations
April 10, 1935	Mexico and United States	Claims Arising from Revolutionary Acts (Amer. J. Int'l Law, Off. Doc. 1938-107)	Claims of U.S. nationals except those from other settlements	U.S. Claims Commission	No Provision	
April 15, 1935	Canada and United States	Claims: Damages Resulting From Operation of Smelter at Trail, British Columbia (6 Bevans 60)	Claims based on damages caused by fumes from smelter of the Consolidated Mining and Smelting Co.	Lump Sum Settlement (for damages prior to Jan. 1, 1932); Mixed Commission	No Provision	$350,000 to U.S. for pre-Jan. 1, 1932 damages; No award for post-Jan. 1, 1932 damages
November 9, and 12, 1938*	Mexico and United States	Compensation for Expropriated Lands (9 Bevans 1038)	Claims based on expropriations of agrarian land by Mexican govt.	Mixed Commission	No Provision	See U.S. Mexico Nov. 19, 1941
November 19, 1941	Mexico and United States	Final Settlement of Certain Claims (9 Bevans 1059)	Claims filed by U.S. and Mexico with commission established Sept. 8, 1923; agrarian claims of U.S. nationals against govt. of Mexico which arose between Aug. 30, 1927 and Oct. 7, 1940; mutual claims for property damage caused by acts of either govt. between Jan. 1, 1927 and Oct. 7, 1940	Lum Sum Settlement	Yes	$40,000,000 to U.S.

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
November 19, 1941*	Mexico and United States	Expropriation of Petroleum Properties (9 Bevans 1055)	Claims based on right to compensation for expropriation of petroleum properties by Mexico	Experts from Both Countries	Yes	See U.S.-Mexico Sept. 25 and 29, 1943
Sept. 25 and 29, 1943	Mexico and United States	Payment for Expropriated Petroleum Properties (9 Bevans 1150)	See U.S.-Mexico Nov. 19, 1941	Lump Sum Settlement	Yes	$23,995,991 to U.S.
August 14, 1947	Italy and United States	Agreement on Claims of U.S. Nationals (The Lombardo Agreement) (61 Stat. 3988; 36 U.N.T.S. 105)	Claims of U.S. nationals arising out of WWII against both Italy and Italian nationals	Mixed Commission	No Provision	$5,000,000 to U.S. (claims determined by Foreign Claims Settlement Commission (FCSC)
July 19, 1948*	Yugoslavia and United States	Agreement Regarding Pecuniary Claims of the United States and its Nationals (Lillich and Weston, International Claims: Their Settlement by Lump Sum Agreements, Part II, 10 (hereinafter "Lillich and Weston"); 62 Stat. 2658, T.I.A.S. No. 1803)	Claims of U.S. nationals based on nationalizations and other takings by Yugoslavia of property of U.S. nationals	Lump Sum Settlement	Yes	$17,000,000 to U.S. (U.S. claims determined by International Claims Commission (ICC) and later by FCSC)
January 26, 1950	Panama and United States	Agreement Regarding Pecuniary Claims (Lillich and Weston, 35; 1 U.S.T. 685, T.I.A.S. No. 2129)	Mutual claims: Panama claim for fire damage; U.S. claims of injuries, seizures of property, and nationalizations	Lump Sum Settlement	Yes	$53,800 to Panama; $3,156 to U.S. for injuries; $400,000 to U.S. for property (claims determined by ICC and FCSC)

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
February 27, 1953	Germany and United States	Settlement of Indebtedness of Germany for Awards Made by the Mixed Claims Commission (4 U.S.T. 908; T.I.A.S. 2796)	Claims based on bonds issued for pre-war indebtedness of Germany to U.S. nationals	Lump Sum Settlement	Yes	$97,500,000 to U.S.
March 30, 1960*	Rumania and United States	Agreement Relating to Financial Questions Between the Two Countries (Lillich and Weston, 217; 11 U.S.T. 317; T.I.A.S. No. 4451)	Claims of U.S. nationals based on contracts acquired prior to Sept. 1, 1939 and payable prior to Sept. 15, 1947, and nationalizations and other takings by Rumania of property of U.S nationals	Lump Sum Settlement	Yes	$24,526,370 to U.S. ($22,026,370 from blocked assets)($2,500,000 in 5 annual installments) (claims determined by FCSC)
July 16, 1960*	Poland and United States	Agreement on Claims of United States Nationals (Lillich and Weston, 227; 11 U.S.T. 1953; T.I.A.S. No. 4545)	Claims of U.S. nationals based on nationalizations and other takings by Poland of property of U.S. nationals; and debts owed by nationalized enterprises	Lump Sum Settlement	Yes	$40,000,000 to U.S. (in 20 annual installments) (claims determined by FCSC)
July 2, 1963*	Bulgaria and United States	Agreement on Claims of United States Nationals (Lillich and Weston, 266; 14 U.S.T. 969; T.I.A.S. No. 5387)	Claims of U.S. nationals based on contracts, and nationalizations by Bulgaria of property of U.S. nationals	Lump Sum Settlement	Yes	$3,543,398 to U.S. ($3,143,398 from blocked assets) (claims determined by FCSC)
November 5, 1964*	Yugoslavia and United States	Agreement on Claims of United States Nationals (Lillich and Weston, 308; [1965] 1 U.S.T. 1; T.I.A.S. No. 5750)	Claims of U.S. nationals based on nationalizations by Yugoslavia of property of U.S. nationals between July 19, 1948 and date of this agreement	Lump Sum Settlement	Yes	$3,500,000 to U.S. (5 annual installments)

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
March 25, 1965	Canada and United States	Agreement Concerning the Establishment of an International Arbitral Tribunal to Dispose of United States Claims Relating to Gut Dam (17 U.S.T. 1566; T.I.A.S. 6114)	Damages caused to real property of U.S. citizens by construction and maintenance of Dam	Mixed Commission (disputes over choice of 3rd member to Int'l Ct. of Justice)	No (claimant may accept decision of tribunal as final)	See U.S.-Canada, Nov. 18, 1968
November 18, 1968*	Canada and United States	"Gut Dam" Settlement (Lillich and Weston, 360; 19 U.S.T. 7863; T.I.A.S. No. 6624)	See above	Lump Sum Settlement	No	$350,000 to U.S.
April 18, 1969*	Japan and United States	Agreement Concerning the Trust Territory of the Pacific Islands (20 U.S.T. 2654; T.I.A.S. No. 6724)	Claims of nationals of U.S. trust territory of the Pacific Islands arising out of WWII	Lump Sum Settlement	Yes	$5,000,000 from U.S. to trust territory; $5,000,000 from Japan to trust territory
March 6, 1973*	Hungary and United States	Agreement Regarding the Settlement of Claims (24 U.S.T. 522; T.I.A.S. 7569)	Claims of U.S. nationals based on contracts acquired prior to Sept. 1, 1939 and payable prior to Sept. 15, 1947, and nationalizations by Hungary of property of U.S. nationals	Lump Sum Settlement	Yes	$18,900,000 to U.S. (also Hungary drops claim for $3,318,614 in blocked assets) (claims determined by FCSC)
February 19, 1974*	Peru and United States	Claims Settlement (25 U.S.T. 227; T.I.A.S. 7792)	Claims of U.S. nationals and Peru based on road construction contracts; claims of U.S. nationals of nationalizations and expropriations by Peru of property of U.S. nationals	Lump Sum Settlement	Yes	$76,000,000 to U.S. (distrib. by U.S. Sec. of State); Peru drops claims against U.S. nationals

Date	Parties	Title of Agreement	Description of Claims	Form of Tribunal	Binding Provision	Amount of Award or Settlement
May 1, 1976*	Egypt and United States	Claims Settlement 27 U.S.T. 4214; T.I.A.S. 8446)	Claims of U.S. nationals based on Egyptian nationalizations and expropriations of property of U.S. nationals	Lump Sum Settlement	Yes	$10,000,000 to U.S. (six semi-annual installments) distrib. by U.S. as it chooses
September 22, 1976*	Peru and United States	Agreement Regarding Claim of Marcona Mining Company (27 U.S.T. 3993; T.I.A.S. 8417)	Claim based on nationalization of assets of Marcona Mining Co. by Peru	Lump Sum Settlement	Yes	$61,440,000 to U.S.
May 11, 1979*	People's Republic of China and United States	Agreement Concerning the Settlement of Claims (T.I.A.S. No. 9306 (1979))	Claims of U.S. nationals based on Chinese nationalizations and expropriations of property of U.S. nationals between October 1, 1949 and May 11, 1979	Lump Sum Settlement	Yes	$80,500,000 to U.S. (accompanied by release of blocked assets)
May 19, 1979*	Egypt and United States	Agreement Concerning the Settlement of Claims (T.I.A.S. No. 9589)	Claims of U.S. nationals reserved by May 1, 1976 Egypt-U.S. agreement	Lump Sum Settlement	Yes	$100,000 to U.S.

APPENDIX B

APPENDIX B

Historical Summary of Congressional Recognition and Approval of the Executive's Authority to Waive and Settle Claims of United States Nationals Against Foreign States and Nationals

The first Executive Agreement settling a claim of United States citizens against a foreign government and foreign nationals was the settlement of the case of the schooner "Wilmington Packet" in 1799.[1] In 1793 the "Wilmington Packet", owned by a United States national, was stopped by a private armed schooner flying the Netherlands flag and taken, eventually, to the Netherlands island of St. Martin. 5 Miller, *Treaties And Other International Acts Of The United States of America* 1079 (1934) (hereinafter cited as "Miller"). At the prize proceedings, the tribunal declared the cargo as a lawful prize of the claimant, but released the vessel. 5 Miller at 1080. In 1794 the case was

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[1] There were a number of Executive Agreements not involving the settlement of claims prior to 1799. Three of these occurred prior to the adoption of the Constitution, *i.e.*, the declaration by John Adams and Benjamin Franklin on December 20, 1783 stating that cessation of hostilities between the United States and Great Britain would be on terms agreed upon for cessation of hostilities between Great Britain, France and Spain; the agreement between the United States and Morocco of 1786 providing for signals of recognition by vessels at sea; and the exchange of notes with the French government in 1784 declaring that the United States would grant no other nation more favorable commercial terms than granted France. W. McClure, *International Executive Agreements* 35-38 (1941). The last agreement modified Article II of the United States-French Treaty of Amity and Commerce of February 6, 1778 and was entered at the direction of Congress by resolution. *Id.* at 37-38. Authority for the Executive to enter into agreements for the delivery of international mail was approved by the Second and Third Congresses, 1 Stat. 232 (239) (2d Cong.) and 1 Stat. 354 (366) (3rd Cong.) and such agreements were entered into with Canada. McClure at 38-39.

brought to the attention of the Department of State which, through the Minister Resident at The Hague, John Quincy Adams, took up the claim with the Netherlands. Negotiations were continued by Adams' successor William Vans Murray. 5 Miller at 1081-1083, 1085. Murray negotiated an agreement[2] in which the Netherlands paid 20,000 florins, 5 Miller at 1075-1077, 1077-1088 and the United States gave "an acquittance in full of all claims." *Id.* and 5 Miller at 1099.

In the negotiations, Murray did not seek "costs and damages" but rather sought the principal of the value of the goods. 5 Miller at 1095. Even on this value, Murray originally sought 69,674 florins but settled for the 20,000 florins. 5 Miller at 1098.

Both governments were then left to deal with their nationals. The Netherlands was to seek repayment from the privateer who seized the "Wilmington Packet"; and the United States to distribute the fund among the claimants, 5 Miller at 1099, which was not accomplished until 1813. 5 Miller at 1103.

After this first Executive Agreement settling the claims of United States citizens, there followed a series of similar agreements. In 1825, the United States settled four claims arising from the seizure of four schooners between 1817 and 1821 by Venezuelan ships. 3 Miller at 195-199. The settlement provided for a lump sum settlement to the United States which was later distributed by the United States government. 3 Miller at 196-197. On December 6, 1825, President John Quincy Adams, in his annual message to Congress, informed Congress of this settlement. 3 Miller at 197. In the same year, the United States, through Sec-

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[2] In the course of the negotiations, the Netherlands raised a question concerning the true ownership of the "Wilmington Packet." To this Murray replied that this question was "perfectly irrelative. . . ." 5 Miller at 1093.

retary of State Henry Clay, settled the claim of the owners of the Brig "Pearl" against the Russian government for $16,994.69, although the total claim was approximately $75,000. 3 Miller at 201-204, 205. Clay rejected the settlement formula which the claimants expected, *i.e.*, lost profits plus value of cargo, settling for the value of the cargo without interest. 3 Miller at 202. In order to bring the Russian government to terms, John Quincy Adams, then Secretary of State, instructed the United States Minister to advise the Russians that unless the Executive was able to settle the claims on a government-to-government basis expeditiously, the President would subject the dispute to Congress; the implicit threat was that Congress would be much harsher in the matter than the Executive was willing to be.

The 1823 negotiation instruction of John Quincy Adams, then Secretary of State, read, in part:

> Hitherto, this subject has been under the exclusive direction, and control of the Executive. But unless some satisfactory prospect of its adjustment should appear from your communications to this Department, it will cease to be so at the next Session of Congress. I have to request therefore, your early attention to it, and information, as soon as may be, of the result of the steps which you will take concerning it. Should you receive assurances that suitable indemnity will be made, there may be no necessity for submitting the case to the consideration of the Legislature. It will otherwise be indispensable.

3 Miller at 206, *quoting* July 16, 1823 instructions to Richard Rush, Minister to London from John Quincy Adams, Secretary of State.

Again in 1829, the Charge d'Affaires of the United States of America near His Majesty The Emperor of Brazil and

the Brazilian Minister and Secretary of State for Foreign Affairs exchanged notes confirming thirteen claim agreements settling claims for losses and damages suffered by the owners and shippers of thirteen American ships seized and held by a Brazilian squadron. 3 Miller at 485-487. Quite clearly, Secretary of State Henry Clay authorized the Charge d'Affaires to Brazil "to agree, treat, consult and negotiate of and concerning claims of the Citizens and Subjects of the two countries respectively upon the Governments of Brazil and the United States, and all matters and subjects connected therewith." 3 Miller at 489, *quoting* authorization dated November 1, 1827, to William Tudor from Henry Clay. Under that authorization, Tudor negotiated the Treaty of Peace, Friendship, Commerce and Navigation of December 12, 1828, as well as the settlement of the thirteen claims. 3 Miller at 489.

Between 1825 and 1850, there were twenty-four Executive Agreements settling the claims of United States citizens. *See* Appendix A. The Executive negotiated and settled the claims without submitting them to Congress for its ratification. Congress was clearly aware of the practice. For example, the Convention for Adjusting Certain Claims signed by the United States and Colombia on November 25, 1829, settled the claims arising from the cases of the Brig "Josephine" and the Schooner "Ranger". 3 Miller at 523-525. The President, in his message of January 19, 1830, stated:

> I deem the present a suitable occasion to inform you that shortly after my communication to Congress at the opening of session dispatches were received from Mr. Moore, the envoy extraordinary and minister plenipoteniary of the United States to Colombia, stating that he had succeeded in obtaining the assent of the council of ministers to the allowance of the claims of our citizens upon that Government in the

> cases of the brig Josephine and her cargo and the schooner Ranger and her cargo. An official copy of the convention subsequently entered into between Mr. Moore and the secretary of foreign affairs, providing for the final settlement of those claims, has just been received at the Department of State. By an additional article [Article 3] of this convention the claim in the case of the Brig Morris is suspended until further information is obtained by the Colombian Government from the Court of Caracas: and Mr. Moore anticipates its early and satisfactory adjustment. The convention only awaited the ratification of Liberator President, who was at the time absent from Bogota, to be binding upon the Colombian Government. Although these claims are not, comparatively, of a large amount, yet the prompt and equitable manner in which the application of Mr. Moore in behalf of our injured citizens was met by that Government entitles its conduct to our approbation, and promises well for the future relations of the two countries.

3 Miller at 527, *quoting* Presidential Message of January 19, 1830.

Similarly, Congress was well aware of the Executive Agreement between the United States and Portugal, signed January 19, 1832, 3 Miller 653, which settled claims arising from the seizure of four ships, owned by United States citizens, by a Portuguese naval squadron. On January 29, 1831, the House of Representatives by resolution requested that the President inform that body of what measures had been taken with respect to the seizure. 3 Miller 661. President Jackson's response was accompanied by a report of Secretary of State Van Buren which stated in part that ". . . one of the first duties enjoined upon the Charge d'Affaires of the United States, on resuming his diplomatic functions,

was to make a formal demand upon Portugal for indemnity to the owner and crew of the vessel in question." 3 Miller at 662, *quoting* Report of Secretary of State Van Buren of February 15, 1831. Later that year, President Jackson reported to Congress on the negotiations: "Since that period frequent promises have been made that full indemnity shall be given for the injuries inflicted and the losses sustained." 3 Miller 655, *quoting* December 6, 1831, Message to Congress. Indeed when the original schedule for payment was not met and an extension of payment given, Congress was so informed by the President. 3 Miller 667.

In 1845, the United States and Great Britain settled various claims arising from the levy of duty on goods of the other nation. 4 Miller at 779-783. Congress was aware of the disputes by virtue of three presidential messages informing Congress of the disputes, and was aware of the agreements to settle the claims. *See* 4 Miller at 783-787. The Message of President Polk of March 23, 1846, described in detail the "arrangement for the adjustment and payment of the claims of the respective governments upon each other" and asserted "the propriety of making provision to carry this arrangement into effect." Indeed in the Act of May 8, 1846, 9 Stat. 6-9, Congress appropriated funds "in fulfilment [*sic*] of the agreement lately entered into by the government of the United States and Great Britain. . . ."

In addition, Congress was informed of at least the following Executive Agreements: Convention for Adjusting Certain Claims, March 16, 1825, 3 Miller at 197 (President John Quincy Adams' Message to Congress of December 6, 1825); Settlement of Claims, January 19, 1832, 3 Miller at 657 (Presidential Message to Congress of December 4, 1832); Settlement of the Claim for the Ship "Mary" and Her Cargo, March 25, 1839, 4 Miller at 180 (President Van Buren's Message to Congress of December 2, 1839); Agreement for the Settlement of the First Case of the

Brig "Macedonian", July 7, 1840, 4 Miller at 293 (President Tyler's Message to Congress of December, 1843); Agreement for the Settlement of the Case of the Brig "Warrior," 4 Miller at 328 (President Tyler's Message to Congress of December 6, 1842); Convention for the Adjustment of the Claim for the Detention and Seizure of the Schooner "John S. Bryan," June 12, 1843, 4 Miller at 513 (President Tyler's Message to Congress of December, 1843); and Arrangement for the Settlement of the Case of the Brig "Morris," February 26 and 29 and March 1, 1844, 4 Miller at 528 (Presidential Messages to Congress of December 3 and 10, 1844).

During the second half of the nineteenth century and the first decade of the twentieth century, the authority of the Executive to settle claims of United States citizens against foreign governments continued as an established practice and repeatedly was recognized by Congress. A large number of pecuniary claims by United States citizens were settled by Executive Agreements during that period without Senate ratification. *See* Moore, "Treaties and Executive Agreements," 1905 *Political Science Quarterly* 385, and Appendix A. Although Congress was informed of these settlements,[3] a review of congressional materials reveals that it voiced no objection. On a single occasion an attempt was made to pass legislation requiring Senate approval of a particular agreement but the attempt failed to pass. 10 Cong. Rec. 2982 (1880); 13 Cong. Rec. 224 (1881). Congressional recognition of the President's authority in this sphere was further reflected by the fact that appropriations were made by Congress for the organization of the commissions established by the Executive Agreements for the adjudication of the claims of United States nationals against foreign governments. 5 Moore, *International Law Digest* 215 (1906).

[3] 4 Cong. Rec. 175; 6 Cong. Rec. 472.

Events in Congress following the end of World War I highlighted the Congress' recognition that the Executive had full authority to settle claims of United States nationals against a foreign government and/or its nationals. After the War with Germany was formally concluded by means of the 1921 peace treaty, Senator Underwood introduced legislation to amend the Trading With The Enemy Act to establish a claims commission consisting solely of American nationals, and to pay claims out of assets of German nationals seized during the War. S. 3852, 67th Cong., 2d Sess., 62 Cong. Rec. 10441 (1922).[4] While this bill was pending, President Harding, through the Secretary of State, effected an agreement with Germany to determine these very claims. The Executive Agreement differed from that proposed in Senator Underwood's bill by providing for a Mixed Claims Commission of one American and one German arbitrator, and by remaining silent on the source of funds to pay the awards made by the Commission. This Agreement, titled "Agreement for a Mixed Commission to Determine the Amount to be Paid by Germany in Satisfaction of Germany's Financial Obligations Under the Treaty Concluded Between the Two Governments on August 25, 1921" was signed by representatives of the two governments on August 10, 1922, and took effect immediately. 3 Malloy, *Treaties, Conventions, International Acts, Protocols and Agreements Between the United States and Other Powers* 2601 (1910). No Congressional authority was sought or contemplated in the Agreement, which was self-executing.

Shortly thereafter, the Executive sought funding for the administrative costs of the Commission's work in the

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[4] The peace treaty provided for the possible use of assets confiscated under the Trading With The Enemy Act to pay the claims of Americans against their former enemy, but did not include any mechanism for settling such claims.

Deficiency Appropriations Bill of 1922, H.R. 12704, 67th Cong., 2d Sess., 62 Cong. Rec. 13050 (1922). Senator Underwood mounted a concerted attack on this appropriation, specifically raising before the full Senate the legality of the Executive Agreement. *Id.* at 13050-71. While he was forced to acknowledge that it had been a regular practice for the Executive to settle claims of American nationals against a foreign government without the advice or consent of Congress, Senator Underwood attempted to distinguish the German claims on the grounds that they arose during wartime, involved large numbers of claims amounting to the hundreds of millions of dollars, and were secured by German collateral (*i.e.*, the seized assets of German nationals). *Id.* at 13058. He also asserted that the passage of the Trading With The Enemy Act and his introduction of amending legislation prior to the signing of the Executive Agreement somehow divested the Executive of its authority to settle these claims. *Id.* The Senate soundly defeated Senator Underwood's attempt to amend the Deficiency Appropriations Bill to eliminate funds requested by the President for the Mixed Claims Commission, 62 Cong. Rec. 13071 (1922), and the funds were appropriated.[5] Senator Underwood's conflicting bill died in committee.

The validity of this Executive Agreement was reiterated in hearings held before a Subcommittee of the Senate Judiciary Committee in 1923, when it discussed three bills designed to ensure that confiscated funds would be used to pay those awards made by the Mixed Claims Commission. The subcommittee members reconfirmed their view that the Executive action to settle claims was proper. *Enemy-owned Property: Hearing Before a Subcommittee*

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[5] The Commission went on to settle the claims and awarded American nationals more than $265,939,000.

of the Senate Committee of the Judiciary on S. 3852, S. 559 and S.J. 225, 67th Cong., 4th Sess., Pt. 2 (1923).

Throughout the period between the two World Wars, the Executive continued to settle the claims of American nationals against foreign governments, frequently by Executive Agreement without any congressional involvement. *See* Appendix A. In those instances where congressional comment was made, it was routine, and implicitly or explicitly acknowledged Presidential authority to act independently in this area. Thus on several occasions Congress requested the President or the Secretary of State to inform it of whatever measures have been taken to settle certain claims, providing such information was "not incompatible with the public interest." S. Res. 438, 66th Cong., 3rd Sess., 60 Cong. Rec. 2153 (1921); S. Res. 170, 68th Cong., 2d Sess., 66 Cong. Rec. 5593 (1925); S. Res. 198, 68th Cong., 2d Sess., *id.* at 7243.

In 1929, Congress received a request from President Hoover for an appropriation to cover the expenses of its settlement of the claim of an American citizen, Charles J. Harrah, against the Cuban Government, for the destruction of a railroad he owned in Cuba. S. Doc. 35, 71st Cong., 1st Sess. (1929). Enclosed with the request was a report to the President from the Secretary of State on the procedure followed for negotiating Harrah's claim:

> Following an earnest effort through diplomatic correspondence to obtain payment of an indemnity in behalf of Mr. Harrah, a protocol was signed on October 1, 1929, in which the Government of Cuba agreed with the Government of the United States to submit the claim for adjudication to a commission composed of one American citizen and one Cuban citizen. In the event that the two commissioners are unable to agree on an award, they are to select a third arbitra-

> tor who shall decide the matter. Should the two commissioners be unable to agree upon a third arbitrator, the two Governments are to choose the third arbitrator. The commission is to hold its first meeting on November 29, 1929, at Habana.

Id.

In hearings before the House Committee on Foreign Affairs on appropriating money for the Harrah claim, no question was raised as to the authority of the Executive to enter such an Agreement. The Committee members apprised themselves of the nature of Harrah's claim and agreed that the requested allocation was proper, noting that numerous other claims of Americans had been resolved in precisely the same manner. *Claim of Charles J. Harrah Against the Government of Cuba: Hearings Before the House Committee on Foreign Affairs on H.J. Res. 248,* 71st Cong., 2d Sess. (1930).

In the floor debate on the Harrah appropriation, the only complaint about this procedure was that raised by Representative LaGuardia that the Department of State had not been vigorous enough in its resolution of the claims of certain other American citizens. LaGuardia acknowledged, however, that "it is quite all right to arbitrate claims of citizens, and it is a proper function of the State Department to protect the interests of American citizens whose rights have been infringed upon by foreign governments. . ." 72 Cong. Rec. 7366, 8371, 9161 (1930). Other Congressmen took issue with LaGuardia's opposition, arguing that it merely served to deprive Mr. Harrah of his right to a prompt settlement of his claim by the Secretary of State. *Id.* at 7366-67. LaGuardia withdrew his opposition, and a Joint Resolution was passed authorizing the appropriation. H.J. Res. 245, *id.* at 9177. The claim was settled.

Similarly, when the President requested appropriation to pay costs involved in settling by arbitration the claim of another national, George J. Salem, against the Government of Egypt, the House Committee on Foreign Affairs hearing was confined to presenting the facts of Mr. Salem's claim. *Arbitration of the Claim of George J. Salem Against the Government of Egypt: Hearings Before the House Committee on Foreign Affairs on H.J. Res. 485*, 71st Cong., 3rd Sess. (1931). The only floor debate concerned whether other Americans with claims against foreign nations were equally represented by the State Department, 74 Cong. Rec. 6209 (1931) and whether too much money was requested to cover the cost of this particular arbitration. *Id.* at 7214. This appropriation, too, was ultimately approved.

The legal commentators of the day fully supported the view of the Congress that it was within the Executive's authority to negotiate and settle the claims of American nationals against foreign governments. In the debate on the settlement of German war claims, an article by James F. Barnett entitled "International Agreements Without the Advice and Consent of the Senate," *Yale Law Journal*, November and December, 1905 at 76, was inserted in the Congressional Record. 62 Cong. Rec. 13062. It stated:

> One of the principal duties of the Department of State relates to the protection of American citizens abroad. If the citizen receives an injury to person or property in a foreign country and the local tribunals or other authorities unjustly deny him redress, the department will as a rule present his claim to the Government of the delinquent State. . . . It may happen, however, that the foreign government is unwilling or unable to pay the claim immediately. In that case the representatives of the two governments

> may enter into an agreement setting forth the amount due and the date and terms of payment. This is, of course, a mere written acknowledgement of an existing indebtedness. Such were the agreements of May 1, 1852, with Venezuela (88 Butler, *Treaty Making Power*, II) and May 24, 1897, with Chile (39 Foreign Relations U.S., 1900, p. 68). They were not submitted to the Senate for approval, nor would there be any reason for doing so. It often happens, however, that the foreign government disputes the facts or the law involved in the claim, and recourse may be had to arbitration to effect a settlement. The arbitral undertaking, styled a "protocol of agreement," usually names an arbitrator or provides a method for choosing one or more, as the case may be; stipulates as to matters of procedure, such as the submission of evidence and briefs of counsel; fixes a time limit within which the award is to be made, and provides that the award shall be final and conclusive. In certain cases the amount due, in the event of an award in favor of the claimant, is agreed upon in advance.
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> As was said by Mr. Cass, Secretary of State in 1859: "It is not necessary to submit to the Senate for its formal approval conventions providing for the adjustment of private claims, unless such a course is indicated in the convention itself." (40 Wheaton's Int. Law (Lawrence), p. 456, note 154.). . .

The Congressional Record also contains portions of John B. Moore's article "Treaties and Executive Agreements" in *Political Science Quarterly*, September 1905 at 385, 62 Cong. Rec. 13063-68. He was even more emphatic, noting:

> But, as has heretofore been pointed out pecuniary claims against foreign governments have constantly

> been settled by the President, and no question as to his possession of such a power, apart from discussions as to its possible limitations, appears ever to have been seriously raised. We, therefore, find in the books little that bears upon the subject, but, in at least one case in which a foreign government sought to qualify an agreement made with the President, the validity and finality of his action were vigorously asserted by the Government of the United States.

Moore continued:

> Not only is the power of the President to settle the claims of citizens of the United States against foreign governments firmly established but he has repeatedly employed arbitration for the purpose. An eminent authority has observed that this "at first glance would seem to be an independent exercise of the treaty-making power," but that, "in a strict sense" it "cannot be so regarded;" and it has therefore been placed among "certain acts of an international character, binding the Government, which the President may perform without the interposition of the Senate." (John W. Foster, "The treaty-making power," Yale Law Journal, December, 1901, vol. xi, pp. 77, 79.) The legal theory on which such settlements rest is simple. Arbitration is in such cases only one of the modes by which the President exercises his power to settle claims of individuals against foreign governments. If, in the exercise of this power, differences arise which apparently cannot be directly solved, it is a natural and obvious thing to submit them to the judgment of impartial persons. As early as September 5, 1793, Mr. Jefferson, as Secretary of State, when discussing with the British minister the question of losses sustained by vessels unlawfully captured within American jurisdiction proposed

> as a provisional measure that the collector of customs of the particular district and the British consul "or any other person you please" should "appoint persons to establish the value of the vessel and cargo." (American State Papers, Foreign Relations, vol. i, pp. 174, 175.)

Moore noted that "it would be a work of supererogation to attempt to cite all the cases in which the Executive of the United States has settled individual claims against foreign governments without reference to the Senate . . .," but went on to list many examples from the preceding fifty years.

Congress did not dispute the President's power to settle the claims of United States nationals against the Russian government and Russian nationals following President Roosevelt's recognition of the government of the Union of Soviet Socialist Republics in 1933. That settlement was set forth in an exchange of notes between President Roosevelt and Maxim M. Litvinoff, the U.S.S.R.'s Commissar for Foreign Affairs. *See* 78 Cong. Rec. 465-66 (1934) for the text of the notes. The settlement also resulted in the transfer to the United States of even those assets on which liens had been obtained in the United States' or various states' courts. House Rep. No. 624, 84th Cong., 1st Sess. (1955), reprinted in [1955] U.S. Code Cong. & Ad. News 2745, 2750. In floor debates on the nomination of the first ambassador to the U.S.S.R., opponents as well as supporters of President Roosevelt's action concluded that the act of recognition, together with the accompanying agreements, was not subject to Senate review. 78 Cong. Rec. at 468. Furthermore, the Congress authorized funds to provide for the adjudication by a Commissioner of claims of American nationals against the U.S.S.R. Pub. Res. No. 36, 53 Stat. 1199 (1939); *see* H. Rep. No. 865, *Claims of American*

Nationals Against the Government of the Union of Soviet Socialist Republics, 76th Cong., 1st Sess. (1939).[6]

Since World War II, Congress both has recognized and affirmatively approved of the President's exercise of his Constitutional authority to negotiate settlements of claims of United States nationals against foreign sovereigns and their nationals, and to enter into binding settlements without ratification by the Senate. Indeed, the International Claims Settlement Act of 1949, 22 U.S.C. §§ 1621, *et seq.*, as amended (1980), is legislation designed by Congress precisely to implement the distribution of funds received in the course of lump sum settlements entered into exclusively by the Executive with foreign governments. The House of Representatives Report on the legislation when first enacted in 1949 explained:

> This bill [International Claims Settlement Act of 1949] results from an agreement between the Government of the United States and the Government of Yugoslavia, signed at Washington, D.C. on July 19, 1948, in full settlement for American property nationalized or otherwise taken over by Yugoslavia. . . .
>
> The bill would provide a procedure and a mechanism whereby the money received by the United States in pursuance of the agreement can be apportioned among the claimants. The United States, however, is pressing claims of similar nature against other Governments. *As it succeeds in pressing such claims, the money received will be apportioned among the claimants by the same procedure and mechanism. The purpose of the bill thus is not confined to claims against Yugoslavia; it applies to other similar claims as well.*

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[6] In 1955, Congress amended the International Claims Settlement Act of 1949, 22 U.S.C. §§1621, *et seq.*, to provide for the determination by the Foreign Claims Settlement Commission of claims and distribution of funds obtained pursuant to the Litvinoff agreement. Pub. L. 84-285, 69 Stat. 572 (1955).

H. Rep. No. 770, Part 1, 81st Cong., 1st Sess. at 2 (1949) (emphasis supplied). The Yugoslavia settlement was an Executive Agreement not submitted to the Senate for its ratification.

In neither the House nor the Senate Report was the power of the President to enter into such agreements for the settlement of claims disputed. *See also* S. Rep. No. 800, 81st Cong., 1st Sess. (1949). Indeed, Representative Vorys, in setting forth his opposition to the legislation, conceded that the President—not Congress—had the power to enter into settlement agreements, concluding that "[t]here is probably nothing that Congress could do to set aside the settlement made with Yugoslavia." *Minority Views, Settlement Against Foreign Governments*, H. Rep. No. 770, Part 2, 81st Cong., 1st Sess. at 2 (1949).[7]

In the course of the floor debates on the International Claims Settlement Act, Congress' conclusion that the President, rather than Congress, has exclusive authority to settle international claims was restated by both the bill's proponents and opponents. Representative Ribicoff cogently stated Congress' understanding:

> . . . Congress will not approve such future settlements in advance. It will not approve them after the fact. It will not be called upon to approve them at any time. Nor does this bill approve the settlement with Yugoslavia. The simple constitutional point about the matter is that this agreement is the product of an exercise of executive power. It is clearly within the executive power under our Constitution—for it is the executive and not the Congress which has primary power in the

[7] Representative Vorys opposed the legislation because he believed that the Court of Claims, not a new federal agency, should handle the claims, and because he believed that Congress should not encourage claim settlements which do not fully compensate claimants and might encourage future nationalizations at little cost to the offending nation. *Id.* at 2.

> conduct of foreign relations. . . . Such agreements are beyond the constitutional reach of Congress. It could, of course, refuse to set up adequate machinery for making awards to claimants after such claim settlements are entered into. This would have no effect on the scope of the President's authority in this field. It would serve only to deprive certain Americans of their just remedies.

95 Cong. Rec. 8837.

> . . . [Settlement] is a fait accompli. There is nothing this Congress can do about setting aside that claim.

Id. at 8979. The House opponents agreed with Ribicoff's conclusion. *Id.* at 8980 (Rep. Lodge).

The Yugoslavian settlement, 12 Bevans 1277, T.I.A.S. No. 1803 (1948), was the first of a series of at least eleven post-World War II Executive Agreements by which the United States reached agreements for a lump sum amount in full settlement of the claims of its nationals against numerous foreign governments. *See* Appendix A, *supra*. In general, as is the case of the settlement mechanism provided by the Algerian Declarations, *all* claims falling within specified categories of *all* United States nationals were fully settled and discharged. *See, e.g.*, United States-Yugoslavia Settlement, *supra* at Art. 1(a); United States-Rumania Claims Settlement, 1 U.S.T. 317, T.I.A.S. No. 4451 (1960), at Art. 1; United States-Poland Claims Settlement, 11 U.S.T. 1953, T.I.A.S. No. 4545 (1960), at Art. 1; United States-Bulgaria Claims Settlement, 24 U.S.T. 552, T.I.A.S. No. 7569 (1963), at Art. 1; United States-Yugoslavia Claims Settlement (II), 16 U.S.T. 1, T.I.A.S. No. 5750 (1964), Art. 1; United States-Hungary Claims Settlement, 24 U.S.T. 522, T.I.A.S. No. 7569 (1973); United States-Egypt Claims Settlement, 27 U.S.T. 4214, T.I.A.S. No. 8446

(1976), at Art. 1; United States-China Claims Settlement, —— U.S.T. ——, T.I.A.S. 9306 (1979), at Arts. 1-2. In these agreements, release of the foreign government's assets, when held in the United States, was often a provision of a settlement, even though the value of those assets might exceed the lump sum payment, and claimants were not to receive 100% compensation for their claims pursuant to the settlement. *See, e.g.*, Minority Report, H. Rep. 770, Part 2, *supra* at 1. In order to implement these agreements, Congress adopted procedures for the distribution of the lump sum settlement proceeds, thus accepting the President's assertion of power to make the settlements.[8]

In 1963, Senator Keating, concerned about a possible settlement with Czechoslovakia, proposed legislation which would require Senate ratification of any claim agreements made with foreign nations. *See* H.R. 7885, 99 Cong. Rec. 21591 (November 12, 1963). The Senate decidedly rejected the legislation. *Id.* at 21594-5. Senator Fulbright, opposing the legislation, noted:

> I see no reason why the usual procedure should not be followed in this case [regarding a possible Czechoslovakian-United States Settlement]. The custom

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[8] The one exception was in 1974, when Congress effectively blocked the lump sum agreement between the United States and Czechoslovakia. In doing so, however, it did not question the President's authority in any manner. Rather, the settlement called for affording "most-favored-nation" treatment to Czechoslovakia. When the Executive went to Congress seeking such treatment, Congress used the opportunity to scuttle the settlement by providing that "most-favored-nation" treatment would not be provided until Czechoslovakia agreed to a more "equitable" settlement of claims. Trade Act of 1974, Pub. L. No. 93-618, §408, 88 Stat. 2064 (1975). As a result of the Congress' action, Czechoslovakia withdrew from the settlement, as the agreement permitted. Lillich, "The Gravel Amendment to the Trade Reform Act of 1974: Congress Checkmates a Presidential Lump Sum Agreement," 69 *Am. J.I.L.* 837 (1975).

> clearly is to submit such claims to the Foreign Claims Settlement Commission, as provided by law; and we are always given a report in regard to the settlement. But under this Act, such matters have not been handled by treaty. The one exception of which I know involved a case in Panama, but our relations with Panama are on a different basis from our relations with many other countries.
>
> I see no reason whatsoever to depart from the custom, and in this case to require a treaty. . . .

Id. at 21593.

In 1972, Congress again entertained legislation relating to congressional oversight of executive agreements. It took limited action, passing legislation requiring only that the text of significant executive agreements be transmitted to Congress. 1 U.S.C. §112b, Pub.L. 92-403, 86 Stat. 619 (1972) [the "Case Act"]. Senator Case, the author of the Act, noted that its provisions were not prompted by concern over the President's exercise of his traditional power to settle international claims. In a colloquy with John R. Stevenson, the State Department Legal Advisor, Senator Case recognized the long history of the Executive's exercise of power to settle international claims and Congress' acceptance of such power, and expressed his lack of troubling concern:

> Mr. STEVENSON. . . . I am talking about the international claims agreements. This has been something that traditionally the Executive has been considered to have a right as our spokesman and our representative internationally to settle. . . .
>
> Senator CASE. Well, it is a most interesting area and one in which my practice has never led me. *But I*

think it is a most interesting one in which we have accepted the right of the President, one individual, acting through his diplomatic force, to adjudicate and settle claims of American nationals against foreign countries. But that is a fact.

Mr. STEVENSON. That is a fact.

Senator CASE. *That is all right and it doesn't trouble me too much. If we wanted to get into it, I suppose we could do something about it. God knows, I don't think we do.*

• • •

Senator CASE. I remember some claims involving German claims and others. *But I am not really concerned about that matter.*

Hearings before Committee on Foreign Relations, U.S. Senate, Transmittal of Executive Agreements to Congress, 92nd Cong., 1st Sess. 74 (1971) (emphasis supplied).

Although other legislation was proposed and extensive hearings held regarding the President's power to enter into executive agreements, only the Case Act became law. The rejected legislation typically would have required congressional approval of executive agreements before they could be considered effective. These sponsors were prompted by unease with secret and/or far-reaching executive agreements which made major commitments of the United States to other countries, such as commitments of troops, pledges of military actions, and provisions of equipment. *See, in general, Hearings, Congressional Oversight of Executive Agreements—1975,* Subcommittee on Separation of Powers of Committee on the Judiciary, U.S. Sen., 94th Cong., 1st Sess. (1975). Settlement of international claims by the President, without Congressional oversight, expressly was not a concern. As Senator Glenn, the author of S.1251,

himself noted, Congress was not concerned with traditional executive agreements which "were innocuous agreements[,] they were not a major thing, they were working out claims against a foreign government. . . ." *Hearings on Congressional Oversight of Executive Agreements—1975, supra* at 48.

Congress has adhered to the claims settlement process exemplified by the International Claims Settlement Act since the passage of the Foreign Sovereign Immunities Act of 1976. In late 1980, Congress enacted amendments to the International Claims Settlement Act to provide for determination by the Foreign Claims Settlement Commission (FCSC) of outstanding claims of United States nationals against Vietnam. Pub.L. 96-606, 94 Stat. 3534 (Dec. 28, 1980). The House Report stated the purpose of the legislation:

> The purpose of H.R. 5737 is to establish an official inventory of losses of private U.S. property in Vietnam which will have as the basis for eventual efforts by the United States Government to recover those losses from the Government of Vietnam on behalf of U.S. claimants. Recovery is intended to be achieved through direct Government-to-Government negotiation of private property claims.

Committee on Foreign Affairs, U.S. House, H. Rep. No. 96-915, *United States Nationals—Recovery of Losses*, 96th Cong., 2d Sess. at 2 (1980). As the Report notes, previous claims had been negotiated with, *inter alia*, Yugoslavia, Poland, Bulgaria, Hungary, Rumania and China, with recoveries ranging from 10 to 100 percent. *Id.* In each, the settlements were made, "Government-to-Government," that is, by Executive Agreement. Indeed, the Committee on Foreign Affairs particularly remarked upon the "latest suc-

cessful negotiation . . . with the People's Republic of China," which was entered into force by Executive Agreement. *Id.*[9]

It is clear that Congress continues to view the underlying premise of the International Claims Settlement Act of 1949—that the President will negotiate and conclude settlements with foreign governments covering claims of United States nationals—as operative and, in fact, desirable. The settlement with the People's Republic of China, *supra*, evoked no Congressional questioning of presidential power to conclude a settlement.[10]

Following the United States' and Iran's adherence to the Algerian Declarations, which provide for the settlement through an international arbitration tribunal of claims of the United States nationals against Iran and its nationals, both the House and Senate held hearings on the settlement. No legislation has been reported out of the committees before which the hearings were held, which would disapprove the President's exercise of his claims settlement powers.

The hearings before the Senate Committee on Foreign Relations were held after the Committee Chairman reported to the Committee that the Reagan Administration intended to implement the settlement. The Committee, despite the dissatisfaction of some members with the

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[9] *See also Hearings before Subcommittee on Asian and Pacific Affairs and on International Economic Policy and Trade of Committee on Foreign Affairs*, U.S. House, 96th Cong., 1st Sess. (1979), during which Representatives and witnesses commented upon prior successful claims settlements, *id.* at 1, and the desire of the United States "to conclude [with Vietnam] a lump sum claims settlement agreement or other agreement at the appropriate time," *id.* at 18; *see also id.* at 13.

[10] Congress held hearings on the distribution of the proceeds of the China settlement, but did not question the fact of the settlement agreement nor the President's power to conclude it. *See Hearings before Committee on Foreign Relations, U.S. Senate, China Claims,* 96th Cong., 2d Sess. (1980).

terms of the settlement, proceeded with the hearing accepting the premise that the settlement was a *fait accompli* within the President's power. As Senator Lugar said:

> Our Chairman has briefed us at the outset of the hearing and reiterated the thought that he has visited this very day with the President, or with Administration people, who have indicated this Administration is going to proceed with the agreement.
>
> So, in essence, this inquiry is important for the record, *but it appears in terms of effective action, that the agreement has happened and is going to proceed.*

To Hear Testimony on the United States Iranian Agreements: Hearings Before the Senate Committee on Foreign Relations, 97 Cong., 1st Sess. (February 17, 1981) (official transcript at 62-63).* (emphasis supplied)

Despite specific requests by some claimants against Iran who said they were aggrieved by the settlements, Congress and the committees did not report out remedial legislation or question the Executive's authority. In the hearing before the Senate Committee on Banking, Housing and Urban Affairs, one witness recommended that Congress either informally or formally through a congressional resolution "make it clear that neither pre-Freeze attachments nor property subject thereto will be affected in any way and that no court judgments will be nullified. More broadly, the Executive Branch should take action to insure that no American claimant is involuntarily deprived of a United States court forum for its claims against Iran. . . ." *Iranian Assets Settlement: Hearing Before the Senate Committee on Banking, Housing and Urban Affairs*, 97th

* The official transcript is available for inspection at the offices of the Committee.

Cong., 1st Sess. 160 (February 19, 1981) (statement of Thomas W. Luce, III). The witness also suggested legislation or a declaration by concurrent resolution ending the national emergency and the President's authority to act, citing 50 U.S.C. §1706. *Id.* The Committee has not accepted the suggestions.

Similarly, in hearings before the Senate Foreign Affairs Committee, claimants suggested modifications in the implementation of the Declarations, such as not transferring attached funds until it is clear whether Iran will replenish the $1 billion escrow account. *Hearings Before Senate Committee on Foreign Relations, supra* (February 18, 1981) (official transcript at 5-11, 18). No legislation nor a resolution to that effect have been enacted.* So, too, after hearings, the House has not recommended any remedial or clarifying legislation. Hearings on the Algerian Declarations Before the House Foreign Affaris Committee, 97th Cong., 1st Sess. (February 19, 1981) (unpublished). Thus, while Congress may have some doubts as to the wisdom of the settlement, it has acquiesced, if not concurred, in the exercise of Executive power to enter into the Algerian Declarations.

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* A resolution, H. Con. Res. 48, introduced January 30, 1981, 127 Cong. Rec. H279 (Daily ed., no. 17, Jan. 30, 1981), providing that no further steps implementing the Algerian Declaration be taken absent congressional approval, has not been reported out of the Committee, much less enacted.

APPENDIX C

APPENDIX C

Executive Order 12,170 of November 14, 1979, 44 Fed. Reg. 65,729

Blocking Iranian Government Property

Pursuant to the authority vested in me as President by the Constitution and laws of the United States including the International Emergency Economic Powers Act, 50 U.S.C.A. sec. 1701 *et seq.*, the National Emergencies Act, 50 U.S.C. sec. 1601 *et seq.*, and 3 U.S.C. sec. 301.

I, JIMMY CARTER, President of the United States, find that the situation in Iran constitutes an unusual and extraordinary threat to the national security, foreign policy and economy of the United States and hereby declare a national emergency to deal with that threat.

I hereby order blocked all property and interests in property of the Government of Iran, its instrumentalities and controlled entities and the Central Bank of Iran which are or become subject to the jurisdiction of the United States or which are in or come within the possession or control of persons subject to the jurisdiction of the United States.

The Secretary of the Treasury is authorized to employ all powers granted to me by the International Emergency Economic Powers Act to carry out the provisions of this order.

This order is effective immediately and shall be transmitted to the congress and published in the Federal Register.

THE WHITE HOUSE,
November 14, 1979.

Regulations

Iranian Assets Control Regulations, 31 C.F.R. Part 535, 31 C.F.R.:

§ 535.201 Transactions involving property in which Iran or Iranian entities have an interest.

No property subject to the jurisdiction of the United States or which is in the possession of or control of persons subject to the jurisdiction of the United States in which on or after the effective date Iran has any interest of any nature whatsoever may be transferred, paid, exported, withdrawn or otherwise dealt in except as authorized.

§ 535.203 Effect of transfers violating the provisions of this part.

(e) Unless licensed or authorized pursuant to this part any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which on or since the effective date there existed an interest of Iran.

§ 535.418 Authorization of judicial proceedings under § 535.504.

The general authorization for judicial proceedings contained in § 535.504(a) includes pre-judgment attachment. However, § 535.504(a) does not authorize payment of delivery of any blocked property to any court, marshal, sheriff, or similar entity, and any such transfer of blocked property is prohibited without a specific license. It would not be consistent with licensing policy to issue such a license.

§ 535.504 Certain judicial proceedings with respect to property of Iran or Iranian entities.

(a) Subject to the limitations of paragraphs (b) and (c) of this section, judicial proceedings are authorized with respect to property in which on or since the effective date there has existed an interest of Iran or an Iranian entity.

(b) This section does not authorize or license:

(1) The entry of any judgment or of any decree or order of similar or analogous effect upon any judgment book, minute book, journal or otherwise, or the docketing of any judgment in any docket book, or the filing of any judgment roll or the taking of any other similar or analogous action.

(2) Any payment or delivery out of a blocked account based upon a judicial proceeding, nor does it authorize the enforcement or carrying out of any judgment or decree or order of similar or analogous effect with regard to any property in which Iran or an Iranian entity has an interest.

(c) A judicial proceeding is not authorized by this section if it is based on transactions which violated the prohibitions of this part.

(d) Property transferred into or held in the United States by Iran or an Iranian entity under a specific license which by its terms withdraws the authorization for prejudgment attachment with respect to such property is excluded from the privileges of paragraph (a) of this section.

§ 535.805 Amendment, modification, or revocation.

The provisions of this part and any rulings, licenses, authorizations, instructions, orders, or forms issued thereunder may be amended, modified, or revoked at any time.